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IN THE

Supreme Court of the United States

OCTOBER TERM, 1974

No. 74-1118

CHUGACH NATIVE ASSOCIATION AND CHUGACH NATIVES, INC., *Petitioners*

v.

CENTRAL COUNCIL OF THE TLINGIT & HAIDA INDIANS OF ALASKA AND SEALASKA CORPORATION, *Respondents*

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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TABLE OF CONTENTS

	Page
Opinions Below	1
Jurisdiction	2
Questions Presented	2
Statutes and Rule Involved	3
Statement of the Case	3
I. The Alaska Native Claims Settlement Act	3
II. The Present Controversy	10
A. The Factual Background	10
B. Proceedings Below	13
1. The District Court	13
2. The Court of Appeals	14
Reasons for Granting the Writ	14
I. The Decision Below Undermines the Policies of the Alaska Native Claims Settlement Act	15
II. The Decision Below Undermines the Authority of Executive Departments in Fulfilling Their Statutory Responsibilities	18
III. The Ruling Below That the Secretary of the Interior Need Not Be Joined Is In Conflict with Decisions of Other Courts of Appeals and Is of Wide General Importance	23
CONCLUSION	26

Appendix A (Opinion and Orders of the District Court..1a
Appendix B (Opinion of the Court of Appeals) 5a
Appendix C (Judgment of the Court of Appeals).... 10a
Appendix D (Statute Involved) 11a
Appendix E (Rule Involved) 47a

INDEX OF CITATIONS

CASES:	Page
Ahtna, Inc. v. Doyon, Ltd., Civil No. A-198-72 (D. Alaska)	13
Arctic Slope Regional Corp., et al. v. Doyon, Ltd., et al., Civ No. A-38-73 (D. Alaska)	18
Associated General Contractors, etc. v. Laborers' International Union, 476 F.2d 1388 (T.E.C.A.)	24
Best v. Humboldt Placer Mining Co., 371 U.S. 334	20
Boesche v. Udall, 373 U.S. 472	20
Boles v. Greeneville Housing Authority, 468 F.2d 476 (C.A.6)	23, 24, 25
Bristol Bay Native Corp. v. Cook Inlet Region, Inc., Civil No. A-37-73 (D. Alaska)	13
Cameron v. United States, 252 U.S. 450	20
Chemehuevi Tribe of Indians v. FPC, 43 U.S.L.Wk. 4334 (Mar. 3, 1975)	22
Costello v. United States, 365 U.S. 265	15
Eby v. Reb Realty, Inc., 495 F.2d 646 (C.A. 9)	22
Edwards' Lessee v. Darby, 12 Wheat. (25 U.S.) 206	22
Evergreen Park Nursing & Convalescent Home, Inc. v. American Equitable Assurance Co., 416 F.2d 1113 (C.A. 7)	25
Leber v. Canal Zone Central Labor Union, etc., 383 F.2d 110 (C.A. 5)	24
Norwegian Nitrogen Products Co. v United States, 288 U.S. 294	21
Order of R.R. Conductors v. Pa. R.Co., 323 U.S. 166	25
Permian Basin Area Rate Cases, 390 U.S. 747	20
Power Reactor Development Co. v. Electrical Workers, 367 U.S. 396	21, 22
Provident Bank & Trust Co. v. Patterson, 390 U.S. 102	25
Red Lion Broadcasting Co. v. FCC, 395 U.S. 367	21, 22
Smith v. District Unemployment Compensation Board, 435 F.2d 433 (C.A.D.C.)	24
Tlingit & Haida Indians of Alaska v. United States, 177 F. Supp. 452 (Ct. Claims)	6
Trafficante v. Metropolitan Life Ins. Co., 409 U.S. 205	22
Udall v. Tallman, 380 U.S. 1	21
Zemel v. Rusk, 381 U.S. 1	21, 22

STATUTES AND RULES: Page

Alaska Native Claims Settlement Act of 1971, Public Law 92-203, December 18, 1971, 85 Stat. 688 *et seq.*, 43 U.S.C. § 1601 *et seq.*:

§ 2 4
§ 2(a) 4
§ 2(b) 4, 9, 14, 15, 16
§ 5(a) 5, 9, 10
§ 7(a) 2, 4, 8, 10, 11, 12, 13, 14, 15, 19
§ 7(d) 4
§ 7(e) 8
§ 8(a) 4
§ 10(a) 10
§ 11 ..... 7, 16
§ 11(a) 5, 6, 9, 16, 17
§ 11(b) 5
§ 12 ..... 6, 16
§ 12(a) 5, 9
§ 12(b) 5, 10, 18
§ 12(c) 5, 6, 9, 15, 16, 18
§ 12(h) 10
§ 14(a) 5
§ 14(h) 7, 16
§ 16 ..... 7, 9
§ 16(a) 6
§ 16(b) 6, 9
§ 16(c) 6
§ 17 7
§ 17(a) 9
§ 17(d) 7, 8, 9, 17
§ 19(b) 9
§ 22(h) 9

Judicial Code:

28 U.S.C. § 1254(1) 2

R.S. § 441, 5 U.S.C. § 485 20
R.S. § 453, 43 U.S.C. § 2 20
R.S. § 2478, 43 U.S.C. § 1201 20

MISCELLANEOUS:

Wright & Miller, Federal Practice and Procedure (1972) 25

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Petitioners Chugach Natives, Inc. and Chugach Native Association pray that a writ of certiorari issue to review the judgment of the Court of Appeals for the Ninth Circuit in this case.

OPINIONS BELOW

The memorandum opinion, judgment, and order denying reconsideration of the United States District Court for the District of Alaska are unreported. They are reprinted in App. A, pp. 1a-4a, *infra*. The

opinion of the Court of Appeals for the Ninth Circuit is reported at 502 F.2d 1323 and reprinted in App. B, pp. 5a-9a, *infra*.

JURISDICTION

The judgment of the Court of Appeals for the Ninth Circuit was entered on September 5, 1974. It is reprinted in App. C, p. 10a, *infra*. A timely petition for rehearing was denied on November 8, 1974. On January 27, 1975, Mr. Justice Brennan entered an order extending the time to filing this petition for certiorari to March 6, 1975. This Court has jurisdiction under 28 U.S.C. §1254(1).

QUESTIONS PRESENTED

The Alaska Native Claims Settlement Act of 1971 provides for the distribution of 40 million acres of land to Natives by the Secretary of the Interior through Village Corporations and 12 Regional Corporations. Section 7(a) of the Act provides that the Secretary shall establish Regional boundaries, which affect many other decisions and rights under the Act, within one year; it provides further that any dispute over Regional boundaries is to be arbitrated between the Regions involved. In notifying the respective Regions of the boundaries which he had established the Secretary declared that he would follow those boundaries "in [his] administration of the Act" unless a different boundary was established by arbitration within 90 days. The questions presented are:

1) Did the court below correctly extend the right to arbitrate regional boundaries indefinitely, subject only to the equitable doctrine of laches?

2) May the Secretary's limitations determination be disregarded because he was not construing a statutory "term", as the court below held?

3) Is the Secretary of the Interior a person who should be joined if feasible (Rule 19(a) F.R.Civ.P.) in an action brought by a party dissatisfied by his boundary determination after expiration of the deadline which he established?

STATUTES AND RULE INVOLVED

This case involves the Alaska Native Claims Settlement Act of 1971, Public Law 92-203, December 18, 1971, 85 Stat. 688 *et seq.*, 43 U.S.C. § 1601 *et seq.* It is set forth in App. D, pp. 11a-46a, *infra*. The case also involves Rule 19(a) of the Federal Rules of Civil Procedure. This Rule is reprinted in App. E, p. 47a, *infra*.

STATEMENT OF THE CASE

I. THE ALASKA NATIVE CLAIMS SETTLEMENT ACT

This case arises under the Alaska Native Claims Settlement Act of 1971 (hereafter the "Act"). A description of the basic elements of what the court below correctly described as "this complex piece of legislation" (p. 8a, *infra*) is essential for an understanding of the merits and public importance of the issues raised by this petition.

The Act constitutes the largest land grant to any group of Native Americans in our history, consisting of 40 million acres of land. This land, plus just under a billion dollars in monies, is granted to the Natives not as a gift but in settlement of claims by the Natives against the United States for the taking of their lands when the United States acquired the Territory of

Alaska by purchase from Russia. In § 2 of the Act Congress finds and declares that:

> "(a) there is an immediate need for a fair and just settlement of all claims by Natives and Native groups of Alaska, based on aboriginal land claims;
>
> (b) the settlement should be accomplished rapidly, with certainty, in conformity with the real economic and social needs of Natives, without litigation, with maximum participation by Natives in decisions affecting their rights and property, without establishing any permanent racially defined institutions, rights, privileges, or obligations, without creating a reservation system or lengthy wardship or trusteeship, and without adding to the categories of property and institutions enjoying special tax privileges or to the legislation establishing special relationships between the United States Government and the State of Alaska; * * *"

A. The lands granted by the Act are to be distributed by the Secretary of the Interior by patents to Regional Corporations and Village Corporations, which the Act requires to be established. Section 8(a) provides that native residents entitled to receive lands and benefits under the Act shall organize as a Village Corporation before the village may receive patents to lands or benefits under the Act. Section 7(a) directs the Secretary of the Interior to divide the State of Alaska *within one year* into 12 geographical regions approximating the areas covered by the operation of 12 already existing native associations; under § 7(d) each of these Native Associations shall cause a Regional Corporation to be organized. Section 7(a) also provides for arbitration, between the Native Associations involved, of any dispute over the regional boundaries.

The Secretary is required to prepare, within two years, a roll of all Natives, where possible according to the region and village of his residence. (§ 5(a)).

In §§ 11(a)(1) and (2) of the Act Congress itself withdrew from all forms of appropriation under the public land laws certain lands including or in proximity to the Native Villages identified in § 11(b). Section 11(a)(3) of the Act directs the Secretary, if he determines that the lands withdrawn by subsections (a)(1) and (2) are insufficient to permit the Village and Regional Corporations to select the acreage to which they are entitled, to withdraw *three times* that deficiency from the nearest unreserved vacant and unappropriated public lands. The Secretary is required to do so "on the basis of the best available information within 60 days of the date of the enactment of this Act or as soon thereafter as practicable."[1]

Section 12(a) provides that the Corporation for each Native Village listed in § 11(b) shall within three years select, "in accordance with rules established by the Secretary," from the lands withdrawn by § 11(a), the acreage to which it is entitled under § 14(a). The difference between 22 million acres and the total acreage selected under § 12(a) is to be allocated by the Secretary among the 11 Regional Corporations (other than respondent Sealaska) on the basis of the number of Natives enrolled in each region, and to be reallocated by the Regional Corporations among their respective Native Villages (§ 12(b)). Section 12(c) allocates 16 million acres (withdrawn under

[1] All time periods discussed in this Petition commence, unless expressly stated otherwise, with the date of the enactment. December 18, 1971.

§§ 11(a)(1), (2) and (3)) among the 11 Regional Corporations other than Sealaska, apportioned as described below.

Respondent Sealaska and the Village Corporations in its region are not entitled to select lands under § 12.[2] However, those Village Corporations are entitled under § 16(b) to select within three years certain acreage from lands withdrawn pursuant to § 16(a).

The special situation of Sealaska affects not only its own entitlement under the Act, but that of the other Regional Corporations as well. For, § 12(c)(1) provides that the acreage to which each other Regional Corporation is entitled, is to be computed according to a formula in which one factor is "all land in Alaska (excluding the Southeast region) that is within each of the eleven regions".[3] Consequently, the entitlement of *no* region can be known until the size

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[2] This difference in treatment results from the circumstance that the Tlingits and Haidas had already obtained funds pursuant to a judgment in their favor on their claims against the United States. See *Tlingit & Haida Indians of Alaska* v. *United States*, 177 F.Supp. 452 (Ct. Claims, 1959) and § 16(c) of the Act.

[3] While the precise formula is unimportant for present purposes, we shall set it forth for completeness. Although expressed in the statute in terms of a percentage, it is perhaps more easily understood as a ratio as follows:

$$\frac{\text{Each Region's Selection Entitlement}}{\text{Total Selection Entitlement of 11 Regions}} = \frac{\text{Each Region's Area}}{\text{Alaska — S.E. Region}}$$

Thus, if the Southeast region increases, the denominator (Alaska — Southeast) decreases. Accordingly, every region whose own area remains constant would receive a higher proportion of the total entitlement of the 11 regions, which is also constant. The gains of those regions are at the expense of that region whose size is decreased for the benefit of the Southeast region.

of the Southeast region (Sealaska) is established. This proposition, which is of critical importance in the administration of the Act, is not controverted.

Additionally, § 14(h) of the Act authorizes the Secretary to withdraw and convey two million acres outside the areas withdrawn by §§ 11 and 16 for certain special purposes described in subsection (h)(1), (2), (3) and (5). Section 14(h)(8) provides that any portion of the two million acres not conveyed for those purposes shall be allocated to the Regional Corporations on the basis of population. Respondent Sealaska *is* eligible to select and receive lands under § 14(h).

The primary objective of the Act is the disposition of the public lands to the Natives. But Congress did not stop there. It also set in motion procedures which will enable it to make the most beneficial use in the public interest of up to 80 million acres of land. Section 17(d)(2)(A) directs the Secretary to withdraw up to 80 million acres of unreserved lands "which the Secretary deems are suitable for addition to or creation as units of the National Park, Forest, Wildlife Refuge, and Wild and Scenic Rivers Systems." This must be done within nine months (§ 17(d)(2)(B)). Section 17 (d)(2)(C) requires the Secretary to make recommendations to Congress every six months for a period of two years of his recommendation for lands withdrawn under § 17(d)(2)(A) for inclusion in these National systems. Lands recommended to be included will remain withdrawn until Congress acts on the Secretary's recommendations, but not to exceed five years from the time of recommendation, which means December 17, 1978 at the latest.

By virtue of § 17 some lands are subject to potentially conflicting demands by Native claims and by the

public interest. The Act resolves these conflicts by providing that the *Village* Corporations may select and receive patents to lands even though they are withdrawn for potential inclusion in one of the National Systems described in § 17(d)(2). However, the *Regional* Corporations are entitled only to identify lands withdrawn under § 17(d)(2) which they desire to select, and their selection may not be tentatively approved nor a patent awarded as long as these lands are withdrawn; that is, until the Secretary or Congress determines that they should not be included in a National System (§17(d)(2)(E)).[4]

B. Congress did not merely declare the wish that the settlement "be accomplished rapidly, with certainty" (§ 2(b)). It imposed on the Secretary, the Native Associations and even on itself a series of tight deadlines. The most important of these appear in the following schedule:

Time	Action	Statutory Authority
December 17, 1972	Secretary must divide state into 12 geographical Regions.	§ 7(a)
June 17, 1973	Regional Corporations must be incorporated and Articles and Bylaws submitted to Secretary for approval.	§ 7(c)

[4] The latter section provides further that other lands shall be made available for alternative selection if Congress enacts legislation utilizing for a public purpose any lands which the Regional Corporations desire to select, and extends their time for selection accordingly.

Time	Action	Statutory Authority
December 17, 1973	(a) Secretary must complete Native Roll.	§ 5(a)
	(b) Secretary makes final recommendations to Congress on National Interest Lands.	§ 17(d)(2)
	(c) Villages may elect to acquire surface and subsurface rights to Village reserves in lieu of land selections.	§ 19(b)
December 17, 1974	(a) Village Corporations must complete land selections.	§§ 12(a), 16(b)
	(b) Termination of withdrawals made under §§ 11(a)(2) and 16.	§ 22(h)(2)
December 17, 1975	(a) Regional Corporations must complete land selections.	§ 12(c)(3)
	(b) Termination of withdrawals other than those made by §§ 11(a)(2), 16 and 17.	§ 22(h)(1)
May 30, 1976	Land Use Planning Commission must make final report.	§ 17(a)(10)
December 17, 1978	Congress must make final decision respecting Secretary's legislative recommendations, or withdrawals lapse.	§ 17(d)(2)(D)

To assure "certainty" Congress precluded judicial review of actions potentially affecting important rights under the Act.[5] It further provided, in § 10(a), that any civil action to challenge the Act must be brought within one year and may be brought only by a duly authorized official of the State of Alaska. Congress explained:

> "The purpose of this limitation on suits is to insure that, after the expiration of a reasonable period of time, the right, title, and interest of the United States, the Natives, and the State of Alaska will vest with certainty and finality and may be relied upon by all other persons in their relations with the State, the Natives, and the United States."

II. THE PRESENT CONTROVERSY

A. The Factual Background.

The present case arises out of a controversy between respondents Sealaska Corporation and its founding Native Association, the Central Council of Tlingit and Haida Indians, and petitioners Chugach Natives, Inc. and its founding Native Association, over the proper boundary of the Sealaska and Chugach Regions. During the year 1972 when the Secretary was preparing his map of all the regional boundaries in the State pursuant to § 7(a) of the Act, both sides sought to persuade him of the merits of their positions. By letter of June 15, 1972 the Alaska State Office of the

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[5] See § 5(a) (determinations by the Secretary concerning the eligibility of a native for enrollment); § 12(b) (decisions by the Secretary and the Regional Corporations with respect to distribution to Village Corporations); § 12(h)(5) (determinations by the Secretary pursuant to his authority to convey up to 160 acres of occupied land to an individual native).

Department of the Interior advised both the Tlingit-Haida Central Council and the Chugach Native Association as follows (R.[6] 48-49):

> "Since the need for establishment of the boundaries of each region has become imperative, * * * we have plotted a boundary between the T-H C.C. [Tlingit-Haida Central Council] Region and the C.N.A. [Chugach Native Association] Region. The boundary is plotted on the enclosed map and can be described as a continuation of the boundary line between the United States and Canada on Mt. St. Elias south along the 141° west longitudinal line.
>
> This boundary is being submitted to the T-H C.C. and the C.N.A. for arbitration as provided in Section 7(a) of the Alaska Native Claims Settlement Act (P.L. 92-203).
>
> * * * We will submit the boundary to the Secretary of the Interior 60 days after the latest date of receipt of this letter by the T-H C.C. or the C.N.A. with a recommendation that it be fixed as drawn, if the T-H C.C. and C.N.A. have not been able, or willing, to arbitrate the boundary between the regions and have not submitted a mutually agreed-upon boundary to this office by that date.
>
> We would prefer that the T-H C.C. and the C.N.A. arrive at a mutually agreed-upon boundary, but if this is not possible, we would appreciate being informed at the earliest possible time so that the matter can be referred to the Secretary for resolution."

While there were subsequent communications between the parties and between the parties and the Interior Department, no arbitration was held. On

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[6] "R." refers to the Record in the Court of Appeals.

December 11, 1972 the Secretary made his determination of all the regional boundaries, and notified the respective Native Associations of his determination. As recommended by the State Office, he approved the Sealaska-Chugach boundary which the Chugach had sought. In a letter to the President of Sealaska Corporation he stated, after describing § 7(a):

> "After consideration of the requirements of Section 7(a), *supra* and of all submissions of claimants of common points, the Regional boundary for Sealaska Corporation is hereby established as shown on the enclosed metes and bounds description and illustrated on the enclosed map, both of which are made a part of this letter.
>
> As further provided by Section 7(a) of the act, any dispute over the described boundary shall be resolved by a board of arbitrators consisting of one person selected by each of the Regional corporations involved, and an additional one or two persons, whichever is needed to make an odd number of arbitrators, the additional person or persons to be selected by the Regional corporations involved.
>
> In case there is objection and the dispute goes to arbitration, the boundary may be set by such arbitration. *Unless the arbitration establishes a boundary change within 90 days from the receipt of this letter,* [*March 15, 1972*] *the boundary contained in the enclosed description and map will be used by this Department in its administration of the Alaska Native Claims Settlement Act of 1971.*" (R. 52, emphasis added)

Sealaska protested the Secretary's authority to set a limitation. It also made demands for arbitration on the Chugach, but no arbitration was commenced. See p. 7a, *infra*.

B. Proceedings Below.

1. The District Court.

On May 1, 1973, respondents brought this action in the United States District Court for the District of Alaska against petitioners to compel arbitration pursuant to § 7(a). Petitioners moved to dismiss, or in the alternative, for summary judgment, on the ground that the suit had been filed after the date on which the Secretary of the Interior had determined that arbitration must be completed. The petitioners asserted as an alternative ground for dismissal that the Secretary should have been joined as a party defendant pursuant to Rule 19 of the Federal Rules of Civil Procedure.

On December 4, 1973, the District Court granted the motion to dismiss because of respondents' delay in bringing the suit. He referred to two other cases in which Regional Corporations had brought suit to compel another Region to arbitrate:

> "In a companion case, *Ahtna, Inc.* v. *Doyon, Ltd.*, Civil No. A-198-72, this court compelled arbitration on January 18, 1973, on the assumption that a fruitful arbitration could be reached before the ninety day period lapsed. In another companion case, *Bristol Bay Native Corp.* v. *Cook Inlet Region, Inc.*, Civil No. A-37-73, this court refused to compel arbitration, because of laches under circumstances where the request to compel arbitration was filed one day before the ninety day period lapsed." (Pp. 1a-2a, *infra*)

He thereupon concluded that Sealaska's claim was even more clearly barred than that of Bristol Bay in the latter case (p. 2a, *infra*). He added:

> "In this case arbitration could not possibly reach fruition within the ninety day period. To rule

otherwise would impede the Secretary's ability to implement Sections 5, 11, 17 and 19 of the Act according to the timetable set forth in the Act." (Pp. 2a-3a, *infra.*)

2. The Court of Appeals.

The Court of Appeals reversed. The Court held that the Secretary was without authority to impose the 90-day limitation, and that the limitation was not even to be afforded deference as an administrative determination by the responsible executive department because there "is no term here * * * which requires interpretation." (P. 7a, *infra*). The Court held also that a suit to compel arbitration under § 7(a) could be barred only by the equity doctrine of laches, and having determined that the facts did not warrant invocation of this doctrine, directed that the District Court enter an order compelling arbitration. (Pp. 8a-9a, *infra*) Lastly, the Court declared that the Secretary was not a party who should be joined if feasible within Rule 19, F.R.Civ.P. (P. 9a, *infra.*)

REASONS FOR GRANTING THE WRIT

Congress constructed a complex and intricate structure for the distribution of an unparalleled grant. A central component of this structure was the Congressional determination, that "the settlement should be accomplished rapidly, with certainty" (§ 2(b)) in order that these lands can be exploited for the benefit of the Natives and the public promptly and without delaying litigation. The decision below disrupts the Congressional design and frustrates the Congressional objectives. It does so for reasons which are patently without merit, and in a litigation in which the moving party did not join the official whom Congress charged

with administering this vast undertaking. This Court has been steadfast in assuring that the Native peoples enjoy every right to which they are entitled under law. Since this grant will affect the well-being of the Alaskan Natives for generations to come, exercise of this Court's jurisdiction in this case to correct these errors of law is essential.

I. THE DECISION BELOW UNDERMINES THE POLICIES OF THE ALASKA NATIVE CLAIMS SETTLEMENT ACT.

The holding of the Court of Appeals that a demand for arbitration of boundary disputes under § 7(a) is timely, unless it would be barred by the equitable doctrine of laches, undermines the Congressional policy, declared in § 2(b) of the Act that "the settlement should be accomplished rapidly, with certainty, * * * ". For the Court thereby postponed for the indefinite future any final determination of those boundaries. The flexibility of the standards for determining whether a party has been guilty for laches is wholly appropriate to their usual function—to enable a Court to do equity in light of all the circumstances in each case. But this very strength entails what is a fatal weakness where public policy requires that *some* date be fixed after which no dispute will be entertained. And the doctrine is even less appropriate where public policy requires an *early* termination of all disputes, for equity often tolerates very lengthy delays—27 years in *Costello* v. *United States,* 365 U.S. 265, 281-284, the precedent cited by the court below, p. 8a, *infra.*

Congress sufficiently evidenced its understanding that prompt establishment of regional boundaries is essential by providing that the Secretary must accomplish this task within one year, as the first step in the distri-

bution of the lands granted. And, a brief description of the most obvious, and perhaps most important of the manifold relationship between those boundaries and the decisions that must be made by the Secretary and the native corporations, will further demonstrate the destructive impact of the decision below on the Congressional policy declared in § 2(b).

Each region's entitlement to select and obtain land depends on its own size (§ 12(c)(1)(A)). Thus, until the boundaries of each region are known, the Secretary cannot determine that the lands withdrawn under §§ 11(a)(1) and 11(a)(2) are sufficient to permit the selection of its full entitlement, or instead that there is a deficiency calling into play § 11(a)(3), which requires him to withdraw three times the amount of such deficiency. Nor, of course, can the Secretary determine what lands are available for § 11(a)(3) withdrawals to supply the deficiency of any region until he knows the location of its boundaries. By the same token, no region can know how much and what land it may select under § 12(c) until its precise size and location are known.[7]

The importance of a prompt and definitive determination of the regional boundaries is all the greater, given the relationship between withdrawals and selections for the benefit of the natives under §§ 11 and 12 and withdrawals and recommendations for inclusion

[7] Additionally, if a region were to lose a boundary dispute after it has begun or completed its selection process, two serious complications would arise: Land selected in the disputed area would have to be surrendered, and, because the region's entitlement under § 12(c) would be reduced proportionately, it would have to give up other lands as well.

into National Systems under § 17(d)(2). See pp. 7-8, *supra*. Under the order of priorities established by § 17(d)(2)(E) (see p. 8, *supra*) a Regional Corporation which selects lands which are also recommended by the Secretary to Congress for inclusion into one of the National Systems will not obtain that land unless it persuades Congress to reject the Secretary's recommendations. Thus, prior to the Secretary's final proposals, on Dec. 17, 1973, the regions sought to persuade him to exclude lands which the regions wished to obtain, and if they failed in these negotiations frequently opted for lands which were not subject to competition. The Secretary also sought to minimize such conflicts, in making his withdrawals under § 11 (a)(3) and in preparing his recommendations under § 17(d)(2), both to protect the Natives and to maximize the acreage which Congress might include in the National Systems. Of course, these carefully synchronized decisions were made on the basis of the regional boundaries as they were then understood. Any dislocation of those boundaries will reopen the problem for the Secretary and any affected regions, by requiring shifts in selections previously made and creating new needs for land under the statutory formula.

As serious as the change of any regional boundaries established by the Secretary would be, a determination that *all* the regional boundaries are still open is truly devastating. Yet that result is not only implicit in the Court's holding that a boundary dispute is subject to arbitration unless it is barred by laches, it follows directly from the conclusion that the dispute between the present parties must be arbitrated. As the Secretary of the Interior represented through counsel to the

District Court in a related action where the Secretary *was* joined as a party defendant:

> "Under Section 12(b) [and] (c) of the Act, the percentage share of the State of *no region* can be determined until the size of the Southeastern Region is fixed because the Act requires the subtraction of the area in the Southeast Region from the rest of the State before computation is commenced. If the 90-day period given by the Secretary is not binding, at least as to these regions which have made no substantial steps toward compliance within that period, then either the Southeastern Region or its northern neighbor, Chugach, can at any time request and receive arbitration of their boundary. If that arbitration results in a boundary change, *every major administrative decision* previously made will have been uprooted. Such a result cannot have been intended by Congress.[4]

[4] Of course, other boundaries not previously arbitrated could be reopened under the same circumstances. The Southeast-Chugach boundary is the most vital, however, and best serves to illustrate the supreme importance of finality. In addition, the Court should be aware that Chugach-Southeast have come to no agreement of any kind, voluntary or arbitrated." [8]

II. THE DECISION BELOW UNDERMINES THE AUTHORITY OF EXECUTIVE DEPARTMENTS IN FULFILLING THEIR STATUTORY RESPONSIBILITIES.

The result reached by the court below is bad enough. But the decision below requires review and correction no less because of the method by which the Court

[8] Memorandum In Support Of Opposition To Plaintiff's Motion For A Preliminary Injunction (on behalf of Rogers C. B. Morton), in *Arctic Slope Regional Corporation, et al.* v. *Doyon, Ltd., et al.*, Civ. No. A-38-73 (D.Alaska) pp. 3-4 (emphasis in original.) This Memorandum was placed in the record below, and the quoted portions appear at R. 168-169.

reached that result. For, in construing the Alaska Native Claims Settlement Act, the Court disregarded this Court's teachings regarding statutory construction as it affects the discharge of their functions by the Executive Department. It did so in two ways: It inferred from the silence of Congress a denial of authority essential to carry out the responsibilities imposed by Congress, rather than a grant thereof, and it refused, for a novel and untenable reason, to follow the precedents which command respect for the contemporaneous construction of legislation by the officials charged with setting its machinery in motion.

A. The Court of Appeals acknowledged, with understatement, that its decision "is not * * * an ideally precise solution" (p. 9a, *infra*). But it placed the onus on Congress, and invited those concerned (necessarily including the Secretary) to seek an amendment to the Act:

> "But Congress, which appears to have inadvertently failed to set a statutory deadline for arbitration, is better equipped to impose a precise solution, and further entreaties are best addressed there." (*Id.*)

Even if it be assumed that the statute does not declare when arbitration must be completed,[9] the court below drew the wrong conclusion from Congressional silence.

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[9] A construction of the statute which the Chugach advanced below, and will urge here if certiorari is granted, is that § 7(a) contemplates that arbitration of boundary disputes will precede the Secretary's establishment of the boundaries. This was apparently the view of the Alaska State Office of the Department, see p. 11, *supra*. It is not necessarily inconsistent with the Secretary's action, for on this view, the 90-day period allowed by his December 11 letter was an act of grace.

This Court has repeatedly sustained assertions of authority by the Secretary, even though not expressly granted in the statute he was there administering, because other statutes grant the Secretary "general managerial powers over the public lands" (*Boesche* v. *Udall*, 373 U.S. 472, 476).[10] See also *Cameron* v. *United States*, 252 U.S. 450, 459-460; *Best* v. *Humboldt Placer Mining Co.*, 371 U.S. 334, 336-337. These other statutes should suffice here as well.

The reasoning of the court below is also contrary to the general principle enunciated by the late Justice Harlan for a unanimous Court in the *Permian Basin Area Rate Cases*, 390 U.S. 747, 776:

> "This Court has repeatedly held that the width of administrative authority must be measured in part by the purposes for which it was conferred; see, e.g., Piedmont & Northern R. Co. v. Comm'n, 286 U.S. 299; Phelps Dodge Corp. v. Labor Board, 313 U.S. 177, 193-194; National Broadcasting Co. v. United States, 319 U.S. 190; American Trucking Assns. v. United States, 344 U.S. 298, 311. Surely the Commission's broad responsibilities therefore demand a generous construction of its statutory authority."

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[10] See also *id.* at n. 6:

> "R.S. § 441, 5 U.S.C. § 485, charges the Secretary 'with the supervision of public business relating to * * * [p]ublic lands, including mines.' He is directed by R.S. § 453, 43 U.S.C. § 2, to 'perform * * * all executive duties * * * in anywise respecting * * * public lands [of the United States].' and R.S. § 2478, 43 U.S.C. § 1201, authorizes him 'to enforce and carry into execution, by appropriate regulations, every part of the provisions of * * * [the Title dealing with public lands] not otherwise specifically provided for.' "

The Secretary of the Interior's responsibilities under the Alaska Native Claims Settlement Act in administering the disposition of 40 million acres of land and recommending future uses for an additional 80 million acres are at least commensurate to those of the Federal Power Commission under the Natural Gas Act; his statutory authority is deserving of a no less generous construction.[11]

B. The Court refused to give the Secretary's establishment of an arbitration deadline the "respect" which this Court has repeatedly held to be "due when the administrative practice at stake 'involves a contemporaneous construction of a statute by the men charged with the responsibility of setting its machinery in motion, of making the parts work efficiently and smoothly while they are yet untried and new.' *Norwegian Nitrogen Products Co.* v. *United States*, 288 U.S. 294, 315." *Power Reactor Development Co.* v. *Electrical Workers*, 367 U.S. 396, 408. See also, *e.g.*, *Udall* v. *Tallman*, 380 U.S. 1, 16; *Zemel* v. *Rusk*, 381 U.S. 1, 11; *Red Lion Broadcasting Co.* v. *FCC*, 395

[11] The court below justified its conclusion by adverting to the Congressional "policy of self-determination on the part of the Alaska Native people" (p. 7a, *infra*). While that policy may underlie the decision to allow private arbitration of Regional boundary disputes (which first appeared, without explanation, in the conference report), its has little, if anything, to do with the *timing* of such arbitration. That relates rather to the administration of the Act, which the conference report vested in the Secretary, and particularly to the prompt establishment of Regional boundaries on which so much else depends. In the realm of time, Congress left little room for self-determination, by establishing a strict schedule (see pp. 8-9 *supra*) in furtherance of the policy that "the settlement be accomplished rapidly, with certainty." It is the latter policy, which the court below overlooked, that bears on, and should govern the resolution of, the present issue.

U.S. 367, 381; *Trafficante* v. *Metropolitan Life Ins. Co.*, 409 U.S. 205, 210; *Chemehuevi Tribe of Indians* v. *FPC*, 43 U.S.L.Wk. 4334, 4338-39, 4340, slip op. pp. 13-14, 18 (decided Mar. 3, 1975). The present case is a classic instance of such an administrative practice, as it grows out of the Secretary's contemporaneous exercise of the monumental responsibilities vested in him by the Act.

The reason given by the court below for not affording deference, under this principle, to the Secretary's determination was that: "There is no term here—like the statutory definition of 'creditor' in *Eby* [v. *Reb Realty, Inc.*, 495 F.2d 646, 649-50 (C.A. 9)]—which requires interpretation." (See p. 7a, *infra*) The Court thereby confused the relatively familiar with the absolutely necessary and imposed upon this "venerable" [12] rule of construction a limitation which this Court's decisions have not observed. The rule has been followed with respect to more than just a "term" in a statute in, to mention only cases already cited, *Power Reactor, Zemel* and *Red Lion*. In the very recent *Chemehuevi* case it was utilized both with respect to the particular term ("project works") of the Federal Power Act and with respect to the "surplus water" clause of its § 4(e). Contemporaneous administrative construction is obviously equally helpful to a court whether it is a "term", a clause, a section, or the statute as a whole whose meaning is at issue.

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[12] See *Red Lion, supra*, 395 U.S. at 381. The description is apt, since the Court has afforded "very great respect" to "the contemporaneous construction of those who were called upon to act under the law, and were appointed to carry its provisions into effect" since at least 1827 when *Edwards' Lessee* v. *Darby*, 12 Wheat. (25 U.S.) 206, 210, was decided.

III. THE RULING BELOW THAT THE SECRETARY OF THE INTERIOR NEED NOT BE JOINED IS IN CONFLICT WITH DECISIONS OF OTHER COURTS OF APPEALS, AND IS OF WIDE GENERAL IMPORTANCE.

The court below held that the Secretary of the Interior is not a party who should be joined pursuant to Rule 19(a) of the F.R.Civ.P. It did so while holding on the merits that the Secretary had exceeded his authority in establishing a deadline for arbitration of regional boundary disputes, and, although plaintiffs' objectives in this litigation can be accomplished only if the Secretary were to alter, contrary to his expressed intent, the Sealaska-Chugach boundary he established for use in his "administration" of the Act.

Directly in point, and contrary to the decision below, is *Boles* v. *Greenville Housing Authority,* 468 F.2d 476 (C.A. 6). This was an action challenging an urban renewal plan which had been approved by the U.S. Housing and Urban Development Program (HUD). The plaintiffs were owners of property within and near the project; the sole defendant was the local agency which was administering it. The Court of Appeals held, *sua sponte,* that HUD should be joined. Judge Tuttle, who was sitting by designation, wrote:

> "The basis of the appellants' attack is that the Urban Renewal Plan as it now exists violates, inter alia, HUD guidelines and the Urban Renewal Act. Yet it was on the basis of its interpretation of these same provisions that HUD approved the Plan, thus assuring its implementation. Thus, when appellants attack the Plan, they indirectly attack HUD's administrative decision approving the Plan.
>
> In order to grant the relief sought by the appellants this court would be compelled to hold in ef-

> fect that not only did HUD misinterpret its own guidelines, but that it also misconceived its function and prerogatives under the Urban Renewal Act. To make such a determination without joining HUD is to deprive it of the right to defend the integrity of its administrative decisions in these areas which so intimately affect its policies and procedures.
>
> We are most hesitant to set the precedent of allowing the policies and practices of HUD or any other federal agency to be overhauled by the judiciary without at least affording the agency the opportunity to be heard in support of its present operation." *Id.* at 479, footnote omitted.

So here, in suing to compel for arbitration after the Secretary's deadline expired, Sealaska "indirectly attack[ed the Secretary's] administrative decision" establishing that deadline, and in granting Sealaska relief the court below was compelled to hold that the Secretary "misconceived [his] functions and prerogatives under the" Alaska Native Claims Settlement Act.

Under the reasoning of *Boles* and of the decisions of other Courts of Appeals which are in accord,[13] the Secretary of the Interior should have been joined as a party. Nevertheless, the court below was not at all "hesitant to set the precedent of allowing the policies and practices of [the Secretary of the Interior] to be overhauled by the judiciary without an opportunity to be heard." That court stated in conclusionary fashion that "neither condition of the Rule [19(a)] is met" (p. 9a, *infra*). Yet, if one applies the tests

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[13] See *Smith* v. *District Unemployment Compensation Board* 435 F.2d 433, 439 (C.A.D.C.); *Associated General Contractors, etc.* v. *Laborers' International Union*, 476 F.2d 1388, 1405-1407 (T.E.C.A.). Cf. *Leber* v. *Canal Zone Central Labor Union, etc.*, 383 F.2d 110, 115 (C.A. 5).

stated in the only authority which it cited (*id.*), or more importantly, follows this Court's definitive analysis of Rule 19(a) in *Provident Bank & Trust Co.* v. *Patterson,* 390 U.S. 102, it becomes entirely clear that *both* conditions were met.[14]

The ruling that a government official need not be joined if feasible in a suit which draws into question the validity of his determinations or where the result may affect the conduct of his office, is in conflict with

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[14] 1) Sealaska cannot obtain complete relief without the Secretary's presence. To be sure, an arbitration can be directed and conducted in his absence, but it will avail Sealaska naught unless the Secretary thereafter abandons the boundary established on December 11, 1971, contrary to his admonition therein. In deciding questions of joinder under Rule 19(a), a court must examine the entire controversy, *Provident Bank & Trust Co.* v. *Patterson, supra,* 390 U.S. at 108, 112, n. 10; see also *Evergreen Park Nursing & Convalescent Home, Inc.* v. *American Equitable Assurance Co.,* 417 F.2d 1113, 1115 (C.A. 7), since otherwise the rule cannot serve "the general policy of avoiding multiple litigation, [and] providing the parties with complete and effective relief in a single action * * *" (7 Wright & Miller, *Federal Practice and Procedure,* § 1604, p. 35 (1972)), cited p. 9a, *infra.*

2) It is likewise clear that the Secretary "claims an interest" within the meaning of Rule 19(a). Indeed, it is difficult to imagine how the court below reached the opposite conclusion. If the court's view was that the Secretary did not "claim" an interest because he did not appear or because he would not be bound by the result, the court was clearly in error under the reasoning of this Court in *Provident Bank, supra,* 390 U.S. at 108, 110; see also *Wright & Miller, supra,* at 39-40. And if the court believed that his official desire to vindicate his decision establishing the deadline, to preserve the boundaries which he established and to avoid the adverse consequences for his administration of the Act which would follow from a change of Sealaska's boundary, pp. 14-18, *supra,* does not constitute an "interest" within the meaning of the rule, its decision is contrary not only to the *Boles* case, discussed above, but to decisions of this Court under an earlier version of Rule 19. *United States* v. *Hellard,* 322 U.S. 363, 366-367; *Order of R.R. Conductors* v. *Pa. R. Co.,* 323 U.S. 166, 171-172

that of other Courts of Appeals. As the issue is a frequently recurring one, it deserves this Court's consideration quite aside from the importance of the context in which it here arises.

CONCLUSION

This petition for certiorari should be granted.

Respectfully submitted,

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APPENDIX

APPENDIX A

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ALASKA

No. J-3-73 Civil

CENTRAL COUNCIL OF THE TLINGIT & HAIDA INDIANS OF ALASKA, and SEALASKA CORPORATION, *Plaintiffs,*

v.

CHUGACH NATIVE ASSOCIATION, and CHUGACH NATIVES, INC., *Defendants.*

Memorandum and Orders

THIS MATTER comes before the Court on defendants' motion to dismiss complaint, or in the alternative, for summary judgment.

By a letter dated December 11, 1972, the Secretary of the Interior notified all the Native organizations in Alaska of their tentative regional boundaries pursuant to the Alaska Native Claims Settlement Act of December 18, 1971 (85 Stat. 688). That communication also informed those Native organizations of their right to compel arbitration of boundary disputes within ninety days of receipt of that letter. Stated succinctly, any Native organization wishing to contest its boundary lines as proposed by the Secretary had until March 15, 1972 in which to compel arbitration under Section 7 of the Act.

In a companion case, *Ahtna, Inc.* v. *Deyon, Ltd.*, Civil No. A-198-72, this court compelled arbitration on January 18, 1973, on the assumption that a fruitful arbitration could be reached before the ninety day period lapsed. In another companion case, *Bristol Bay Native Corp.* v. *Cook Inlet Region, Inc.*, Civil No. A-37-73, this court refused to compel arbitration, because of laches under circumstances

where the request to compel arbitration was filed one day before the ninety day period lapsed.

Plaintiffs in this action filed the complaint to compel arbitration on May 1, 1973. As yet plaintiffs have not moved to compel arbitration. Neither have plaintiffs joined the Secretary of Interior as a party defendant.

Defendants have moved to dismiss on several theories, the most appropriate of which is that plaintiffs' complaint fails to state a claim upon which relief can be granted. Under Fed. R. Civ. P. 12(b)(6), a complaint is sufficient against a motion to dismiss except where it appears to a certainty that plaintiff would be entitled to no relief under any state of the facts which could be proved in support of the claim. *Leimer* v. *State Mut. Life Assur. Co.*, 108 F.2d 302 (8th Cir. 1940).

Plaintiffs in the instant cause are entitled to no relief under any state of facts which could be proved in support of their claim. Plaintiffs filed their complaint over sixty days after the date on which arbitration should have been completed under the timetable set forth in the Secretary's letter of December 11, 1972. Their failure to seek timely arbitration clearly amounts to laches, especially in view of this court's finding of laches in *Bristol Bay Native Corp.* v. *Cook Inlet Region, Inc.*, a case concerning circumstances more favorable to compelling arbitration than the one at bar.

The interest analysis underlying the *Ahtna* decision is clearly set forth in the Memorandum and Order dated March 23, 1973, of *Bristol Bay Native Corp.* v. *Cook Inlet Region, Inc., supra.* In *Ahtna*, the competing interests of self determination and rapid implementation of the Act would not be frustrated by compelling arbitration when a reasonable assumption existed that arbitration could be completed within the ninety day period. In this case arbitration could not possibly reach fruition within the ninety

day period. To rule otherwise would impede the Secretary's ability to implement Sections 5, 11, 17 and 19 of the Act according to the timetable set forth in the Act.

As to the request for oral argument, the Court has the power to determine a motion without oral argument in order to expedite its business. Rule 5(C)(1), General Rules of the United States District Court for the District of Alaska. This is particularly true when, as is here the case, the motion is unopposed.

Therefore, IT IS ORDERED:

1. THAT defendants' motion to dismiss is granted.

2. THAT the complaint is dismissed with prejudice.

3. THAT the request for oral argument is denied.

4. THAT defendants' counsel forthwith prepare an appropriate judgment form.

DATED at Anchorage, Alaska, this fourth day of December, 1973.

/s/ JAMES A. VON DER HEYDT
United States District Judge

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ALASKA

No. J-3-73 Civil

(Caption Omitted)

Judgment

The above-captioned matter having come before the Court on defendants' motion to dismiss the complaint, or in the alternative, for summary judgment, and the plaintiffs being entitled to no relief under any state of facts which could be proved in support of their claim,

IT IS ORDERED that the defendants' motion to dismiss is granted and plaintiffs' complaint is dismissed with prejudice.

DATED this 12 day of December, 1973.

/s/ JAMES A. VON DER HEYDT
James A. Von Der Heydt
United States District Judge

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ALASKA

No. J-3-73 Civil

(Caption Omitted)

Order

THIS MATTER comes before the Court on plaintiff's motion to reconsider, and cross-motion for summary judgment, and by reason of its order dated December 4, 1973,

IT IS ORDERED:

1. THAT plaintiffs' motion for reconsideration is denied.

2. THAT plaintiffs' cross-motion for sumary judgment is denied.

DATED at Anchorage, Alaska, this 31st day of January, 1974.

/s/ JAMES A. VON DER HEYDT
United States District Judge

APPENDIX B

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

CENTRAL COUNCIL OF THE TLINGIT & HAIDA INDIANS OF ALASKA,

and

SEALASKA CORPORATION,

Plaintiffs-Appellants,

vs.

CHUGACH NATIVE ASSOCIATION,

and

CHUGACH NATIVES, INC.,

Defendants-Appellees.

No. 74-1453

OPINION

[September 5, 1974]

Appeal from the United States District Court
for the District of Alaska

Before: KOELSCH, CARTER and CHOY,
Circuit Judges.

CHOY, Circuit Judge:

This is a suit brought by the Central Council of the Tlingit & Haida Indians and their regional corporation, Sealaska Corp., to compel arbitration of a boundary dispute with the Chugach Natives under §7(a)[1] of the Alaska Native Claims Settlement Act. The district court held the suit was barred by laches, and this appeal ensued. We reverse.

The Native Claims Act grants the Native peoples of Alaska substantial amounts of money and forty million acres of land as com-

[1] 43 U.S.C. §1606(a).

pensation for the Natives' aboriginal land claims. To administer the property and money, the Act authorizes the creation of twelve regional corporations which are to correspond to the areas inhabited by the various Native groups. The Tlingits' and Haidas' Sealaska Corp. and the Chugachs' Chugach Natives, Inc., are the two corporations established for those peoples' regions.

The statute, in §7(a), sets forth the procedure for determining the boundaries of the twelve regions.

> For purposes of this chapter, the State of Alaska shall be divided by the Secretary [of the Interior] within one year after December 18, 1971, into twelve geographic regions, with each region composed as far as practicable of Natives having a common heritage and sharing common interests. . . . Any dispute over the boundaries of a region or regions shall be resolved by a board of arbitrators consisting of one person selected by each of the Native associations involved, and an additional one or two persons . . . to be selected by the arbitrators selected by the Native associations involved.

The Tlingits and Haidas basically reside in the southeastern portion of the state—the relatively populous panhandle between Canada and the sea—from near Yakutat and the 141st meridian southward. The Chugachs are their immediate northerly neighbors occupying the area along the Gulf of Alaska around Prince William Sound and Valdez to the west near Cook Inlet. On December 11, 1972—prior to the deadline in §7(a)—the Secretary issued his map setting the regional boundaries; the border between the two regions involved in this case was established at the 141st meridian. Appellants, however, claim that an approximately 150 mile stretch of land along the coast from the meridian to the Copper River more properly belongs in their region. Though the land is largely uninhabitated, the Tlingits and Haidas assert the area has important cultural and historical significance to them.

Sealaska first brought its claim to light just after it was formed, in June, 1972. During the summer months the chairman of Sealaska's boundary committee repeatedly tried to arrange negotiations over the question with the president of the newly-formed Chugach Natives, Inc., Cecil Barnes. Barnes never declared outright opposition to the proposal for negotiations but merely

demurred, explaining that he was unable to gather an opinion from his corporation's Board of Directors on the issue. By November no progress had been made. Sealaska complained to the Interior Department, and Barnes also wrote the Department setting forth the Chugach argument for the 141st meridian boundary.

In December the Secretary notified the regions of his §7(a) decision. In a letter accompanying his map, the Secretary explained that if arbitration were not completed under §7(a) by March 15, 1973, the Department would use the map "in its administration of the Alaska Native Claims Settlement Act of 1971." This was apparently an effort to set an arbitration deadline. While Sealaska protested the Secretary's authority to set such a statute of limitations, it proceeded formally to demand arbitration on January 24, 1973. Chugach Natives, Inc. did not respond. A second demand was made on April 9, and when there was again no response, the present suit was filed on May 1, 1973.

The appellees offer a number of justifications for the district court's decision to dismiss the action, but only three merit full discussion.

First, they contend that the Secretary's administratively-set deadline of March 15, 1973 is binding. The district court gave this factor some weight. The trouble with this, however, is that there is absolutely no authority for the Secretary to establish such a cutoff date in §7(a) or anywhere else in the statute. Indeed, it would be contrary to the expression of the framers of the Act that, in §§7 and 8, they had "adopted a policy of self-determination on the part of the Alaska Native people."[2] Thus, even assuming the deadline was intended to apply to the regional corporations rather than being solely for the Secretary's own administrative purposes, it cannot bind this court.

For a similar reason, the deadline cannot be defended as an administrative "interpretation" to which we should accord deference under cases like *Eby v. Reb Realty, Inc.*, 495 F.2d 646, 649-50 (9th Cir. 1974). There is no term here—like the statutory definition of "creditor" in *Eby*—which requires interpretation.

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[2]Conf. Rep. No. 92-746, 92d Cong., 1st Sess. (1971), 1971 Code Cong. & Ad. News at 2250.

Secondly, appellees argue that the suit is barred by the traditional doctrine of laches. Again, we cannot agree. The two requisites for the applications of laches are well known:

> Laches requires proof of (1) lack of diligence by the party against whom the defense is asserted, and (2) prejudice to the party asserting the defense.

Costello v. United States, 365 U.S. 265, 282 (1961).[3] There is a sufficient showing of neither here. Chugach Natives, Inc. expressed an apparent readiness to negotiate the dispute well into the fall of 1972. Up to then, Sealaska cannot be held responsible for forbearing to sue to compel arbitration, for it thought the more desirable avenue of negotiation was open. *See West Los Angeles Institute for Cancer Research v. Mayer*, 366 F.2d 220, 228 (9th Cir. 1966), *cert. denied*, 385 U.S. 1010 (1967). The November 10th letter, which simply reiterated the Chugach argument to the Department of the Interior, hardly changed that. Shortly thereafter, Sealaska demanded arbitration, and its brief delay in filing and noticing the suit — in part, occasioned by the silence of the Chugach organizations — was hardly unreasonable.

Equally, appellees failed to carry their burden[4] to prove prejudice. While it is claimed that much time and money was expended in reliance on Sealaska's failure to sue for arbitration, the Chugachs present no specific proof of other than minimal reliance during the time *preceding* notice of the suit.

Lastly, appellees argue that the structure of the Act, involving a coordinated set of deadlines for various actions, demands that we adhere to a cutoff date near that set by the Secretary.[5] To describe the operation of this complex piece of legislation in understandable terms would outreach the reasonable bounds of this opinion. Suffice it to say that the Act prescribes a number of significant completion dates with those most immediately proxi-

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[3] *Accord, e.g., Hecht v. Harris, Upham & Co.*, 430 F.2d 1202, 1208 (9th Cir. 1970).

[4] *See Costello v. United States*, 365 U.S. at 282.

[5] By that date the Secretary had to complete designation of national interest lands, 43 U.S.C. §1616(d)(2), a factor which affects future Native selection rights. It is also the final date for villages to elect certain property rights. 43 U.S.C. §1618(b).

mate to the commencement of this litigation occurring in December, 1973. We readily agree that it might upset the sequence of the Act were we to ignore the importance of these dates in considering a plea of laches. However, this lawsuit, filed in May, was not begun so near the December, 1973 deadlines as to endanger the administration of the statute.

Of course, those dates have now passed, but that does not alter our conclusion. We are required to view the case from the time of its filing and notice.

Declaring that these arbitration suits will be barred only if unreasonably delayed is not, we realize, an ideally precise solution. But Congress, which appears to have inadvertently failed to set a statutory deadline for arbitration, is better equipped to impose a precise solution, and further entreaties are best addressed there.

One collateral issue remains. Chugach Natives, Inc., asserts that the Secretary is required to be joined as a party under F. R. Civ. P. 19(a). We disagree, for neither condition of the rule is met. Complete relief can be granted without the Secretary's presence, and the Secretary claims no interest which must be protected in these proceedings. *See generally* C. Wright & A. Miller, Federal Practice and Procedure §1604 (1972).[6]

Reversed with direction to order the parties to arbitration forthwith.

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[6]The related claim that the other regional corporations must be joined under the rule is frivolous.

APPENDIX C

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 74-1453 DC J-3-73

CENTRAL COUNCIL OF THE TLINGIT & HAIDA INDIANS OF ALASKA, and SEALASKA CORPORATION, *Plaintiffs-Appellants*

vs.

CHUGACH NATIVE ASSOCIATION, and CHUGACH NATIVES, INC., *Defendants-Appellees*

Judgment

APPEAL from the United States District Court for the District of Alaska.

THIS CAUSE came on to be heard on the Transcript of the Record from the United States District Court for the District of Alaska and was duly submitted.

ON CONSIDERATION WHEREOF, It is now ordered and adjudged by this Court, that the judgment of the said District Court in this Cause be, and hereby is reversed with directions to order the Parties to arbitration forthwith.

Costs in favor of the Aplt and against the appellee.

Costs: Clerk's Fee	$ 15.00
Docket Fee	50.00
Aplt Opening Brief	296.28
Aplt Reply Brief	171.08
TOTAL	$532.36

Filed and entered September 5, 1974.

ALASKA NATIVE CLAIMS SETTLEMENT ACT

For Legislative History of Act, see p. 2192

PUBLIC LAW 92-203; 85 STAT. 688

An Act to provide for the settlement of certain land claims of Alaska Natives, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That:

This Act may be cited as the "Alaska Native Claims Settlement Act".

DECLARATION OF POLICY

Sec. 2. Congress finds and declares that—

(a) there is an immediate need for a fair and just settlement of all claims by Natives and Native groups of Alaska, based on aboriginal land claims;

(b) the settlement should be accomplished rapidly, with certainty, in conformity with the real economic and social needs of Natives, without litigation, with maximum participation by Natives in decisions affecting their rights and property, without establishing any permanent racially defined institutions, rights, privileges, or obligations, without creating a reservation system or lengthy wardship or trusteeship, and without adding to the categories of property and institutions enjoying special tax privileges or to the legislation establishing special relationships between the United States Government and the State of Alaska;

(c) no provision of this Act shall replace or diminish any right, privilege, or obligation of Natives as citizens of the United States or of Alaska, or relieve, replace, or diminish any obligation of the United States or of the State of Alaska to protect and promote the rights or welfare of Natives as citizens of the United States or of Alaska; the Secretary is authorized and directed, together with other appropriate agencies of the United States Government, to make a study of all Federal programs primarily designed to benefit Native people and to report back to the Congress with his recommendations for the future management and operation of these programs within three years of the date of enactment of this Act;

(d) no provision of this Act shall constitute a precedent for reopening, renegotiating, or legislating upon any past settlement involving land claims or other matters with any Native organizations, or any tribe, band, or identifiable group of American Indians;

(e) no provision of this Act shall effect a change or changes in the petroleum reserve policy reflected in sections 7421 through 7438 of title 10 of the United States Code except as specifically provided in this Act;

(f) no provision of this Act shall be construed to constitute a jurisdictional act, to confer jurisdiction to sue, nor to grant implied consent to Natives to sue the United States or any of its officers with respect to the claims extinguished by the operation of this Act; and

(g) no provision of this Act shall be construed to terminate or otherwise curtail the activities of the Economic Development Administration or other Federal agencies conducting loan or loan and grant programs in Alaska. For this purpose only, the terms "Indian reservation" and "trust or restricted Indian-owned land areas" in Public Law 89-136, the Public Works and Economic Development Act of 1965, as amended, shall be interpreted to include lands granted to Natives under this Act as long as such lands remain in the ownership of the Native villages or the Regional Corporations.

DEFINITIONS

Sec. 3. For the purposes of this Act, the term—

(a) "Secretary" means the Secretary of the Interior;

(b) "Native" means a citizen of the United States who is a person of one-fourth degree or more Alaska Indian (including Tsimshian Indians not enrolled in the Metlaktla Indian Community) Eskimo, or Aleut blood, or combination thereof. The term includes any Native as so defined either or both of whose adoptive parents are not Natives. It also includes, in the absence of proof of a minimum blood quantum, any citizen of the United States who is regarded as an Alaska Native by the Native village or Native group of which he claims to be a member and whose father or mother is (or, if deceased, was) regarded as Native by any village or group. Any decision of the Secretary regarding eligibility for enrollment shall be final;

(c) "Native village" means any tribe, band, clan, group, village, community, or association in Alaska listed in sections 11 and 16 of this Act, or which meets the requirements of this Act, and which the Secretary determines was, on the 1970 census enumeration date (as shown by the census or other evidence satisfactory to the Secretary, who shall make findings of fact in each instance), composed of twenty-five or more Natives;

(d) "Native group" means any tribe, band, clan, village, community, or village association of Natives in Alaska composed of less than twenty-five Natives, who comprise a majority of the residents of the locality;

(e) "Public lands" means all Federal lands and interests therein located in Alaska except: (1) the smallest practicable tract, as determined by the Secretary, enclosing land actually used in connection with the administration of any Federal installation, and (2) land selections of the State of Alaska which have been patented or tentatively approved under section 6(g) of the Alaska Statehood Act, as amended (72 Stat. 341, 77 Stat. 223), or identified for selection by the State prior to January 17, 1969;

(f) "State" means the State of Alaska;

(g) "Regional Corporation" means an Alaska Native Regional Corporation established under the laws of the State of Alaska in accordance with the provisions of this Act;

(h) "Person" means any individual, firm, corporation, association, or partnership;

(i) "Municipal Corporation" means any general unit of municipal government under the laws of the State of Alaska;

(j) "Village Corporation" means an Alaska Native Village Corporation organized under the laws of the State of Alaska as a business for profit or nonprofit corporation to hold, invest, manage and/or distribute lands, property, funds, and other rights and assets for and on behalf of a Native village in accordance with the terms of this Act.

(k) "Fund" means the Alaska Native Fund in the Treasury of the United States established by section 6; and

(*l*) "Planning Commission" means the Joint Federal-State Land Use Planning Commission established by section 17.

DECLARATION OF SETTLEMENT

Sec. 4. (a) All prior conveyances of public land and water areas in Alaska, or any interest therein, pursuant to Federal law, and all tentative approvals pursuant to section 6(g) of the Alaska Statehood Act, shall be regarded as an extinguishment of the aboriginal title thereto, if any.

(b) All aboriginal titles, if any, and claims of aboriginal title in Alaska based on use and occupancy, including submerged land underneath all water areas, both inland and offshore, and including any aboriginal hunting or fishing rights that may exist, are hereby extinguished.

(c) All claims against the United States, the State, and all other persons that are based on claims of aboriginal right, title, use, or occupancy of land or water areas in Alaska, or that are based on any statute or treaty of the United States relating to Native use and occupancy, or that are based on the laws of any other nation, including any such claims that are pending before any Federal or state court or the Indian Claims Commission, are hereby extinguished.

ENROLLMENT

Sec. 5. (a) The Secretary shall prepare within two years from the date of enactment of this Act a roll of all Natives who were born on or before, and who are living on, the date of enactment of this Act. Any decision of the Secretary regarding eligibility for enrollment shall be final.

(b) The roll prepared by the Secretary shall show for each Native, among other things, the region and the village or other place in which he resided on the date of the 1970 census enumeration, and he shall be enrolled according to such residence. Except as provided in subsection (c), a Native eligible for enrollment who is not, when the roll is prepared, a permanent resident of one of the twelve regions established pursuant to subsection 7(a) shall be enrolled by the Secretary in one of the twelve regions, giving priority in the following order to—

(1) the region where the Native resided on the 1970 census date if he had resided there without substantial interruption for two or more years;

(2) the region where the Native previously resided for an aggregate of ten years or more;

(3) the region where the Native was born; and

(4) the region from which an ancestor of the Native came: The Secretary may enroll a Native in a different region when neces-

sary to avoid enrolling members of the same family in different regions or otherwise avoid hardship.

(c) A Native eligible for enrollment who is eighteen years of age or older and is not a permanent resident of one of the twelve regions may, on the date he files an application for enrollment, elect to be enrolled in a thirteenth region for Natives who are non-residents of Alaska, if such region is established pursuant to subsection 7(c). If such region is not established, he shall be enrolled as provided in subsection (b). His election shall apply to all dependent members of his household who are less than eighteen years of age, but shall not affect the enrollment of anyone else.

ALASKA NATIVE FUND

Sec. 6. (a) There is hereby established in the United States Treasury an Alaska Native Fund into which the following moneys shall be deposited:

(1) $462,500,000 from the general fund of the Treasury, which are authorized to be appropriated according to the following schedule:

(A) $12,500,000 during the fiscal year in which this Act becomes effective;

(B) $50,000,000 during the second fiscal year;

(C) $70,000,000 during each of the third, fourth, and fifth fiscal years;

(D) $40,000,000 during the sixth fiscal year; and

(E) $30,000,000 during each of the next five fiscal years.

(2) Four percent interest per annum, which is authorized to be appropriated, on any amount authorized to be appropriated by this paragraph that is not appropriated within six months after the fiscal year in which payable.

(3) $500,000,000 pursuant to the revenue sharing provisions of section 9.

(b) None of the funds paid or distributed pursuant to this section to any of the Regional and Village Corporations established pursuant to this Act shall be expended, donated, or otherwise used for the purpose of carrying on propaganda, or intervening in (including the publishing and distributing of statements) any political campaign on behalf of any candidate for public office. Any person who willfully violates the foregoing provision shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $1,000 or imprisoned not more than twelve months, or both.

(c) After completion of the roll prepared pursuant to section 5, all money in the Fund, except money reserved as provided in section 20 for the payment of attorney and other fees, shall be distributed at the end of each three months of the fiscal year among the Regional Corporations organized pursuant to section 7 on the basis of the relative numbers of Natives enrolled in each region. The share of a Regional Corporation that has not been organized shall be retained in the Fund until the Regional Corporation is organized.

REGIONAL CORPORATIONS

Sec. 7. (a) For purposes of this Act, the State of Alaska shall be divided by the Secretary within one year after the date of enactment at this Act into twelve geographic regions, with each region composed as far as practicable of Natives having a common heritage and sharing common interests. In the absence of good cause shown to the contrary, such regions shall approximate the areas covered by the operations of the following existing Native associations:

(1) Arctic Slope Native Association (Barrow, Point Hope);

(2) Bering Straits Association (Seward Peninsula, Unalakleet, Saint Lawrence Island);

(3) Northwest Alaska Native Association (Kotzebue);

(4) Association of Village Council Presidents (southwest coast, all villages in the Bethel area, including all villages on the Lower Yukon River and the Lower Kuskokwim River);

(5) Tanana Chiefs' Conference (Koyukuk, Middle and Upper Yukon Rivers, Upper Kuskokwim, Tanana River);

(6) Cook Inlet Association (Kenai, Tyonek, Eklutna, Iliamna);

(7) Bristol Bay Native Association (Dillingham, Upper Alaska Peninsula);

(8) Aleut League (Aleutian Islands, Pribilof Islands and that part of the Alaska Peninsula which is in the Aleut League);

(9) Chugach Native Association (Cordova, Tatitlek, Port Graham, English Bay, Valdez, and Seward);

(10) Tlingit-Haida Central Council (southeastern Alaska, including Metlakatla);

(11) Kodiak Area Native Association (all villages on and around Kodiak Island); and

(12) Copper River Native Association (Copper Center, Glennallen, Chitina, Mentasta).

Any dispute over the boundaries of a region or regions shall be resolved by a board of arbitrators consisting of one person selected by each of the Native associations involved, and an additional one or two persons, whichever is needed to make an odd number of arbitrators, such additional person or persons to be selected by the arbitrators selected by the Native associations involved.

(b) The Secretary may, on request made within one year of the date of enactment of this Act, by representative and responsible leaders of the Native associations listed in subsection (a), merge two or more of the twelve regions: *Provided*, That the twelve regions may not be reduced to less than seven, and there may be no fewer than seven Regional Corporations.

(c) If a majority of all eligible Natives eighteen years of age or older who are not permanent residents of Alaska elect, pursuant to subsection 5(c), to be enrolled in a thirteenth region for Natives who are non-residents of Alaska, the Secretary shall establish such

a region for the benefit of the Natives who elected to be enrolled therein, and they may establish a Regional Corporation pursuant to this Act.

(d) Five incorporators within each region, named by the Native association in the region, shall incorporate under the laws of Alaska a Regional Corporation to conduct business for profit, which shall be eligible for the benefits of this Act so long as it is organized and functions in accordance with this Act. The articles of incorporation shall include provisions necessary to carry out the terms of this Act.

(e) The original articles of incorporation and bylaws shall be approved by the Secretary before they are filed, and they shall be submitted for approval within eighteen months after the date of enactment of this Act. The articles of incorporation may not be amended during the Regional Corporation's first five years without the approval of the Secretary. The Secretary may withhold approval under this section if in his judgment inequities among Native individuals or groups of Native individuals would be created.

(f) The management of the Regional Corporation shall be vested in a board of directors, all of whom, with the exception of the initial board, shall be stockholders over the age of eighteen. The number, terms, and method of election of members of the board of directors shall be fixed in the articles of incorporation or bylaws of the Regional Corporation.

(g) The Regional Corporation shall be authorized to issue such number of shares of common stock, divided into such classes of shares as may be specified in the articles of incorporation to reflect the provisions of this Act, as may be needed to issue one hundred shares of stock to each Native enrolled in the region pursuant to section 5.

(h) (1) Except as otherwise provided in paragraph (2) of this subsection, stock issued pursuant to subsection (g) shall carry a right to vote in elections for the board of directors and on such other questions as properly may be presented to stockholders, shall permit the holder to receive dividends or other distributions from the Regional Corporation, and shall vest in the holder all rights of a stockholder in a business corporation organized under the laws of the State of Alaska, except that for a period of twenty years after the date of enactment of this Act the stock, inchoate rights thereto, and any dividends paid or distributions made with respect thereto may not be sold, pledged, subjected to a lien or judgment execution, assigned in present or future, or otherwise alienated: *Provided*, That such limitation shall not apply to transfers of stock pursuant to a court decree of separation, divorce or child support.

(2) Upon the death of any stockholder, ownership of such stock shall be transferred in accordance with his last will and testament or under the applicable laws of intestacy, except that (A) during the twenty-year period after the date of enactment of this Act such stock shall carry voting rights only if the holder thereof through inher-

itance also is a Native, and (B), in the event the deceased stockholder fails to dispose of his stock by will and has no heirs under the applicable laws of intestacy, such stock shall escheat to the Regional Corporation.

(3) On January 1 of the twenty-first year after the year in which this Act is enacted, all stock previously issued shall be deemed to be canceled, and shares of stock of the appropriate class shall be issued without restrictions required by this Act to each stockholder share for share.

(i) Seventy per centum of all revenues received by each Regional Corporation from the timber resources and subsurface estate patented to it pursuant to this Act shall be divided annually by the Regional Corporation among all twelve Regional Corporations organized pursuant to this section according to the number of Natives enrolled in each region pursuant to section 5. The provisions of this subsection shall not apply to the thirteenth Regional Corporation if organized pursuant to subsection (c) hereof.

(j) During the five years following the enactment of this Act, not less than 10% of all corporate funds received by each of the twelve Regional Corporations under section 6 (Alaska Native Fund), and under subsection (i) (revenues from the timber resources and subsurface estate patented to it pursuant to this Act), and all other net income, shall be distributed among the stockholders of the twelve Regional Corporations. Not less than 45% of funds from such sources during the first five-year period, and 50% thereafter, shall be distributed among the Village Corporations in the region and the class of stockholders who are not residents of those villages, as provided in subsection to it. In the case of the thirteenth Regional Corporation, if organized, not less than 50% of all corporate funds received under section 6 shall be distributed to the stockholders.

(k) Funds distributed among the Village Corporations shall be divided among them according to the ratio that the number of shares of stock registered on the books of the Regional Corporation in the names of residents of each village bears to the number of shares of stock registered in the names of residents in all villages.

(*l*) Funds distributed to a Village Corporation may be withheld until the village has submitted a plan for the use of the money that is satisfactory to the Regional Corporation. The Regional Corporation may require a village plan to provide for joint ventures with other villages, and for joint financing of projects undertaken by the Regional Corporation that will benefit the region generally. In the event of disagreement over the provisions of the plan, the issues in disagreement shall be submitted to arbitration, as shall be provided for in the articles of incorporation of the Regional Corporation.

(m) When funds are distributed among Village Corporations in a region, an amount computed as follows shall be distributed as dividends to the class of stockholders who are not residents of those villages: The amount distributed as dividends shall bear the same ratio to the amount distributed among the Village Corporations that

the number of shares of stock registered on the books of the Regional Corporation in the names of nonresidents of villages bears to the number of shares of stock registered in the names of village residents: *Provided*, That an equitable portion of the amount distributed as dividends may be withheld and combined with Village Corporation funds to finance projects that will benefit the region generally.

(n) The Regional Corporation may undertake on behalf of one or more of the Village Corporations in the region any project authorized and financed by them.

(*o*) The accounts of the Regional Corporation shall be audited annually in accordance with generally accepted auditing standards by independent certified public accountants or independent licensed public accountants, certified or licensed by a regulatory authority of the State or the United States. The audits shall be conducted at the place or places where the accounts of the Regional Corporation are normally kept. All books, accounts, financial records, reports, files, and other papers, things, or property belonging to or in use by the Regional Corporation and necessary to facilitate the audits shall be available to the person or persons conducting the audits; and full facilities for verifying transactions with the balances or securities held by depositories, fiscal agent, and custodians shall be afforded to such person or persons. Each audit report or a fair and reasonably detailed summary thereof shall be transmitted to each stockholder, to the Secretary of the Interior and to the Committees on Interior and Insular Affairs of the Senate and the House of Representatives.

(p) In the event of any conflict between the provisions of this section and the laws of the State of Alaska, the provisions of this section shall prevail.

(q) Two or more Regional Corporations may contract with the same business management group for investment services and advice regarding the investment of corporate funds.

VILLAGE CORPORATIONS

Sec. 8. (a) The Native residents of each Native village entitled to receive lands and benefits under this Act shall organize as a business for profit or nonprofit corporation under the laws of the State before the Native village may receive patent to lands or benefits under this Act, except as otherwise provided.

(b) The initial articles of incorporation for each Village Corporation shall be subject to the approval of the Regional Corporation for the region in which the village is located. Amendments to the articles of incorporation and the annual budgets of the Village Corporations shall, for a period of five years, be subject to review and approval by the Regional Corporation. The Regional Corporation shall assist and advise Native villages in the preparation of articles of incorporation and other documents necessary to meet the requirements of this subsection.

(c) The provisions concerning stock alienation, annual audit, and transfer of stock ownership on death or by court decree provided for Regional Corporations in section 7 shall apply to Village Corporations except that audits need not be transmitted to the Committees on Interior and Insular Affairs of the Senate and the House of Representatives.

REVENUE SHARING

Sec. 9. (a) The provisions of this section shall apply to all minerals that are subject to disposition under the Mineral Leasing Act of 1920, as amended and supplemented.

(b) With respect to conditional leases and sales of minerals heretofore or hereafter made pursuant to section 6(g) of the Alaska Statehood Act, and with respect to mineral leases of the United States that are or may be subsumed by the State under section 6(h) of the Alaska Statehood Act, until such time as the provisions of subsection (c) become operative the State shall pay into the Alaska Native Fund from the royalties, rentals, and bonuses hereafter received by the State (1) a royalty of 2 per centum upon the gross value (as such gross value is determined for royalty purposes under such leases or sales) of such minerals produced or removed from such lands, and (2) 2 per centum of all rentals and bonuses under such leases or sales, excluding bonuses received by the State at the September 1969 sale of minerals from tentatively approved lands and excluding rentals received pursuant to such sale before the date of enactment of this Act. Such payment shall be made within sixty days from the date the revenues are received by the State.

(c) Each patent hereafter issued to the State under the Alaska Statehood Act, including a patent of lands heretofore selected and tentatively approved, shall reserve for the benefit of the Natives, and for payment into the Alaska Native Fund, (1) a royalty of 2 per centum upon the gross value (as such gross value is determined for royalty purposes under any disposition by the State) of the minerals thereafter produced or removed from such lands, and (2) 2 per centum of all revenues thereafter derived by the State from rentals and bonuses from the disposition of such minerals.

(d) All bonuses, rentals, and royalties received by the United States after the date of enactment of this Act from the disposition by it of such minerals in public lands in Alaska shall be distributed as provided in the Alaska Statehood Act, except that prior to calculating the shares of the State and the United States as set forth in such Act, (1) a royalty of 2 per centum upon the gross value of such minerals produced (as such gross value is determined for royalty purposes under the sale or lease), and (2) 2 per centum of all rentals and bonuses shall be deducted and paid into the Alaska Native Fund. The respective shares of the State and the United States shall be calculated on the remaining balance.

(e) The provisions of this section shall be enforceable by the United States for the benefit of the Natives, and in the event of

default by the State in making the payments required, in addition to any other remedies provided by law, there shall be deducted annually by the Secretary of the Treasury from any grant-in-aid or from any other sums payable to the State under any provision of Federal law an amount equal to any such underpayment, which amount shall be deposited in the Fund.

(f) Revenues received by the United States or the State as compensation for estimated drainage of oil or gas shall, for the purposes of this section, be regarded as revenues from the disposition of oil and gas. In the event the United States or the State elects to take royalties in kind, there shall be paid into the Fund on account thereof an amount equal to the royalties that would have been paid into the Fund under the provisions of this section had the royalty been taken in cash.

(g) The payments required by this section shall continue only until $500,000,000 have been paid into the Alaska Native Fund. Thereafter the provisions of this section shall not apply, and the reservation required in patents under this section shall be of no further force and effect.

(h) When computing the final payment into the Fund the respective shares of the United States and the State with respect to payments to the Fund required by this section shall be determined pursuant to this subsection and in the following order:

(1) first, from sources identified under subsections (b) and (c) hereof; and

(2) then, from sources identified under subsection (d) hereof.

(i) The provisions of this section do not apply to mineral revenues received from the Outer Continental Shelf.

STATUTE OF LIMITATIONS

Sec. 10. (a) Notwithstanding any other provision of law, any civil action to contest the authority of the United States to legislate on the subject matter or the legality of this Act shall be barred unless the complaint is filed within one year of the date of enactment of this Act, and no such action shall be entertained unless it is commenced by a duly authorized official of the State. Exclusive jurisdiction over such action is hereby vested in the United States District Court for the District of Alaska. The purpose of this limitation on suits is to insure that, after the expiration of a reasonable period of time, the right, title, and interest of the United States, the Natives, and the State of Alaska will vest with certainty and finality and may be relied upon by all other persons in their relations with the State, the Natives, and the United States.

(b) In the event that the State initiates litigation or voluntarily becomes a party to litigation to contest the authority of the United States to legislate on the subject matter or the legality of this Act, all rights of land selection granted to the State by the Alaska Statehood Act shall be suspended as to any public lands which are deter-

mined by the Secretary to be potentially valuable for mineral development, timber, or other commercial purposes, and no selections shall be made, no tentative approvals shall be granted, and no patents shall be issued for such lands during the pendency of such litigation. In the event of such suspension, the State's right of land selection pursuant to section 6 of the Alaska Statehood Act shall be extended for a period of time equal to the period of time the selection right was suspended.

WITHDRAWAL OF PUBLIC LANDS

Sec. 11. (a) (1) The following public lands are withdrawn, subject to valid existing rights, from all forms of appropriation under the public land laws, including the mining and mineral leasing laws, and from selection under the Alaska Statehood Act, as amended:

(A) The lands in each township that encloses all or part of any Native village identified pursuant to subsection (b);

(B) The lands in each township that is contiguous to or corners on the township that encloses all or part of such Native village; and

(C) The lands in each township that is contiguous to or corners on a township containing lands withdrawn by paragraph (B) of this subsection.

The following lands are excepted from such withdrawal: lands in the National Park System and lands withdrawn or reserved for national defense purposes other than Naval Petroleum Reserve Numbered 4.

(2) All lands located within the townships described in subsection (a) (1) hereof that have been selected by, or tentatively approved to, but not yet patented to, the State under the Alaska Statehood Act are withdrawn, subject to valid existing rights, from all forms of appropriation under the public land laws, including the mining and mineral leasing laws, and from the creation of third party interests by the State under the Alaska Statehood Act.

(3) (A) If the Secretary determines that the lands withdrawn by subsections (a) (1) and (2) hereof are insufficient to permit a Village or Regional Corporation to select the acreage it is entitled to select, the Secretary shall withdraw three times the deficiency from the nearest unreserved, vacant and unappropriated public lands. In making this withdrawal the Secretary shall, insofar as possible, withdraw public lands of a character similar to those on which the village is located and in order of their proximity to the center of the Native village: *Provided*, That if the Secretary, pursuant to section 17, and 22(e) determines there is a need to expand the boundaries of a National Wildlife Refuge to replace any acreage selected in the Wildlife Refuge System by the Village Corporation the withdrawal under this section shall not include lands in the Refuge.

(B) The Secretary shall make the withdrawal provided for in subsection (3) (A) hereof on the basis of the best available informa-

tion within sixty days of the date of enactment of this Act, or as soon thereafter as practicable.

(b) (1) The Native villages subject to this Act are as follows:

NAME OF PLACE AND REGION

Afognak, Afognak Island.
Akhiok, Kodiak.
Akiachak, Southwest Coastal Lowland.
Akiak, Southwest Coastal Lowland.
Akutan, Aleutian.
Alakanuk, Southwest Coastal Lowland.
Alatna, Koyukuk-Lower Yukon.
Aleknagik, Bristol Bay.
Allakaket, Koyukuk-Lower Yukon.
Ambler, Bering Strait.
Anaktuvuk Pass, Arctic Slope.
Andreafsey, Southwest Coastal Lowland.
Aniak, Southwest Coastal Lowland.
Anvik, Koyukuk-Lower Yukon.
Arctic Village, Upper Yukon-Porcupine.
Atka, Aleutian.
Atkasook, Arctic Slope.
Atmautluak, Southwest Coastal Lowland.
Barrow, Arctic Slope.
Beaver, Upper Yukon-Porcupine.
Belkofsky, Aleutian.
Bethel, Southwest Coastal Lowland.
Bill Moore's Southwest Coastal Lowland.
Biorka, Aleutian.
Birch Creek, Upper Yukon-Porcupine.
Brevig Mission, Bering Strait.
Buckland, Bering Strait.
Candle, Bering Strait.
Cantwell, Tanana.
Canyon Village, Upper Yukon-Porcupine.
Chalkyitsik, Upper Yukon-Porcupine.
Chanilut, Southwest Coastal Lowland.
Cherfornak, Southwest Coastal Lowland.
Chevak, Southwest Coastal Lowland.
Chignik, Kodiak.
Chignik Lagoon, Kodiak.
Chignik Lake, Kodiak.
Chistochina, Copper River.
Chitina, Copper River.
Chukwuktoligamute, Southwest Coastal Lowland.
Circle, Upper Yukon-Porcupine.
Clark's Point, Bristol Bay.
Copper Center, Copper River.
Crooked Creek, Upper Kuskokwim.

Deering, Bering Strait.
Dillingham, Bristol Bay.
Dot Lake, Tanana.
Eagle, Upper Yukon-Porcupine.
Eek, Southwest Coastal Lowland.
Egegik, Bristol Bay.
Eklutna, Cook Inlet.
Ekuk, Bristol Bay.
Ekwok, Bristol Bay.
Elim, Bering Strait.
Emmonak, Southwest Coastal Lowland.
English Bay, Cook Inlet.
False Pass, Aleutian.
Fort Yukon, Upper Yukon-Porcupine.
Gakona, Copper River.
Galena, Koyukuk-Lower Yukon.
Gambell, Bering Sea.
Georgetown, Upper Kuskokwim.
Golovin, Bering Strait.
Goodnews Bay, Southwest Coastal Lowland.
Grayling, Koyukuk-Lower Yukon.
Gulkana, Copper River.
Hamilton, Southwest Coastal Lowland.
Holy Cross, Koyukuk-Lower Yukon.
Hooper Bay, Southwest Coastal Lowland.
Hughes, Koyukuk-Lower Yukon.
Huslia, Koyukuk-Lower Yukon.
Igiugig, Bristol Bay.
Iliamna, Cook Inlet.
Inalik, Bering Strait.
Ivanof Bay, Aleutian.
Kaguyak, Kodiak.
Kaktovik, Arctic Slope.
Kalskag, Southwest Coastal Lowland.
Kaltag, Koyukuk-Lower Yukon.
Karluk, Kodiak.
Kasigluk, Southwest Coastal Lowland.
Kiana, Bering Strait.
King Cove, Aleutian.
Kipnuk, Southeast Coastal Lowland.
Kivalina, Bering Strait.
Kobuk, Bering Strait.
Kokhanok, Bristol Bay.
Koliganek, Bristol Bay.
Kongiganak, Southwest Coastal Lowland.
Kotlik, Southwest Coastal Lowland.
Kotzebue, Bering Strait.
Koyuk, Bering Strait.
Koyukuk, Koyukuk-Lower Yukon.

Kwethluk, Southwest Coastal Lowland.
Kwigillingok, Southwest Coastal Lowland.
Larsen Bay, Kodiak.
Levelock, Bristol Bay.
Lime Village, Upper Kuskokwim.
Lower Kalskag, Southwest Coastal Lowland.
McGrath, Upper Kuskokwim.
Makok, Koyukuk-Lower Yukon.
Manley Hot Springs, Tanana.
Manokotak, Bristol Bay.
Marshall, Southwest Coastal Lowland.
Mary's Igloo, Bering Strait.
Medfra, Upper Kuskokwim.
Mekoryuk, Southwest Coastal Lowland.
Mentasta Lake, Copper River.
Minchumina Lake, Upper Kuskokwim.
Minto, Tanana.
Mountain Village, Southwest Coastal Lowland.
Nabesna Village, Tanana.
Naknek, Bristol Bay.
Napaimute, Upper Kuskokwim.
Napakiak, Southwest Coastal Lowland.
Napaskiak, Southwest Coastal Lowland.
Nelson Lagoon, Aleutian.
Nenana, Tanana.
Newhalen, Cook Inlet.
New Stuyahok, Bristol Bay.
Newtok, Southwest Coastal Lowland.
Nightmute, Southwest Coastal Lowland.
Nikolai, Upper Kuskokwim.
Nikolski, Aleutian.
Ninilchik, Cook Inlet.
Noatak, Bering Strait.
Nome, Bering Strait.
Nondalton, Cook Inlet.
Nooiksut, Arctic Slope.
Noorvik, Bering Strait.
Northeast Cape, Bering Sea.
Northway, Tanana.
Nulato, Koyukuk-Lower Yukon.
Nunapitchuk, Southwest Coastal Lowland.
Ohogamiut, Southwest Coastal Lowland.
Old Harbor, Kodiak.
Oscarville, Southwest Coastal Lowland.
Ouzinkie, Kodiak.
Paradise, Koyukuk-Lower Yukon.
Pauloff Harbor, Aleutian.
Pedro Bay, Cook Inlet.
Perryville, Kodiak.

Pilot Point, Bristol Bay.
Pilot Station, Southwest Coastal Lowland.
Pitkas Point, Southwest Coastal Lowland.
Platinum, Southwest Coastal Lowland.
Point Hope, Arctic Slope.
Point Lay, Arctic Slope.
Portage Creek (Ohgsenakale), Bristol Bay.
Port Graham, Cook Inlet.
Port Heiden (Meshick), Aleutian.
Port Lions, Kodiak.
Quinhagak, Southwest Coastal Lowland.
Rampart, Upper Yukon-Porcupine.
Red Devil, Upper Kuskokwim.
Ruby, Koyukuk-Lower Yukon.
Russian Mission or Chauthalue (Kuskokwim), Upper Kuskokwim.
Russian Mission (Yukon), Southwest Coastal Lowland.
St. George, Aleutian.
St. Mary's, Southwest Coastal Lowland.
St. Michael, Bering Strait.
St. Paul, Aleutian.
Salamatof, Cook Inlet.
Sand Point, Aleutian.
Savonoski, Bristol Bay.
Savoonga, Bering Sea.
Scammon Bay, Southwest Coastal Lowland.
Selawik, Bering Strait.
Seldovia, Cook Inlet.
Shageluk, Koyukuk-Lower Yukon.
Shaktoolik, Bering Strait.
Sheldon's Point, Southwest Coastal Lowland.
Shishmaref, Bering Strait.
Shungnak, Bering Strait.
Slana, Copper River.
Sleetmute, Upper Kuskokwim.
South Naknek, Bristol Bay.
Squaw Harbor, Aleutian.
Stebbins, Bering Strait.
Stevens Village, Upper Yukon-Porcupine.
Stony River, Upper Kuskokwim.
Takotna, Upper Kuskokwim.
Tanacross, Tanana.
Tanana, Koyukuk-Lower Yukon.
Tatilek, Chugach.
Tazlina, Copper River.
Telida, Upper Kuskokwim.
Teller, Bering Strait.
Tetlin, Tanana.
Togiak, Bristol Bay.

Toksook Bay, Southwest Coastal Lowland.
Tulusak, Southwest Coastal Lowland.
Tuntutuliak, Southwest Coastal Lowland.
Tununak, Southwest Coastal Lowland.
Twin Hills, Bristol Bay.
Tyonek, Cook Inlet.
Ugashik, Bristol Bay.
Unalakleet, Bering Strait.
Unalaska, Aleutian.
Unga, Aleutian.
Uyak, Kodiak.
Venetie, Upper Yukon-Porcupine.
Wainwright, Arctic Slope.
Wales, Bering Strait.
White Mountain, Bering Strait.

(2) Within two and one-half years from the date of enactment of this Act, the Secretary shall review all of the villages listed in subsection (b) (1) hereof, and a village shall not be eligible for land benefits under subsections 14(a) and (b), and any withdrawal for such village shall expire, if the Secretary determines that—

(A) less than twenty-five Natives were residents of the village on the 1970 census enumeration date as shown by the census or other evidence satisfactory to the Secretary, who shall make findings of fact in each instance; or,

(B) the village is of a modern and urban character, and the majority of the residents are non-Native.

Any Native group made ineligible by this subsection shall be considered under subsection 14(h).

(3) Native villages not listed in subsection (b) (1) hereof shall be eligible for land and benefits under this Act and lands shall be withdrawn pursuant to this section if the Secretary within two and one-half years from the date of enactment of this Act, determines that—

(A) twenty-five or more Natives were residents of an established village on the 1970 census enumeration date as shown by the census or other evidence satisfactory to the Secretary, who shall make findings of fact in each instance; and

(B) the village is not of a modern and urban character, and a majority of the residents are Natives.

NATIVE LAND SELECTIONS

Sec. 12. (a) (1) During a period of three years from the date of enactment of this Act, the Village Corporation for each Native village identified pursuant to section 11 shall select, in accordance with rules established by the Secretary, all of the township or townships in which any part of the village is located, plus an area that will make the total selection equal to the acreage to which the village is entitled under section 14. The selection shall be made from lands withdrawn by subsection 11(a): *Provided*, That no Village

Corporation may select more than 69,120 acres from lands withdrawn by subsection 11(a) (2), and not more than 69,120 acres from the National Wildlife Refuge System, and not more than 69,120 acres in a National Forest: *Provided further*, That when a Village Corporation selects the surface estate to lands within the National Wildlife Refuge System or Naval Petroleum Reserve Numbered 4, the Regional Corporation for that region may select the subsurface estate in an equal acreage from other lands withdrawn by subsection 11(a) within the region, if possible.

(2) Selections made under this subsection (a) shall be contiguous and in reasonably compact tracts, except as separated by bodies of water or by lands which are unavailable for selection, and shall be in whole sections and, wherever feasible, in units of not less than 1,280 acres.

(b) The difference between twenty-two million acres and the total acreage selected by Village Corporations pursuant to subsection (a) shall be allocated by the Secretary among the eleven Regional Corporations (which excludes the Regional Corporation for southeastern Alaska) on the basis of the number of Natives enrolled in each region. Each Regional Corporation shall reallocate such acreage among the Native villages within the region on an equitable basis after considering historic use, subsistence needs, and population. The action of the Secretary or the Corporation shall not be subject to judicial review. Each Village Corporation shall select the acreage allocated to it from the lands withdrawn by subsection 11(a).

(c) The difference between thirty-eight million acres and the 22 million acres selected by Village Corporations pursuant to subsections (a) and (b) shall be allocated among the eleven Regional Corporations (which excludes the Regional Corporation for southeastern Alaska) as follows:

(1) The number of acres each Regional Corporation is entitled to receive shall be computed (A) by determining on the basis of available data the percentage of all land in Alaska (excluding the southeastern region) that is within each of the eleven regions, (B) by applying that percentage to thirty-eight million acres reduced by the acreage in the southeastern region that is to be selected pursuant to section 16, and (C) by deducting from the figure so computed the number of acres within that region selected pursuant to subsections (a) and (b).

(2) In the event that the total number of acres selected within a region pursuant to subsections (a) and (b) exceeds the percentage of the reduced thirty-eight million acres allotted to that region pursuant to subsection (c) (1) (B), that region shall not be entitled to receive any lands under this subsection (c). For each region so affected the difference between the acreage calculated pursuant to subsection (c) (1) (B) and the acreage selected pursuant to subsections (a) and (b) shall be deducted from the acreage calculated under subsection (c) (1) (C) for the remaining regions which will select lands under this subsection (c). The reductions shall be

apportioned among the remaining regions so that each region's share of the total reduction bears the same proportion to the total reduction as the total land area in that region (as calculated pursuant to subsection (c) (1) (A) bears to the total land area in all of the regions whose allotments are to be reduced pursuant to this paragraph.

(3) Before the end of the fourth year after the date of enactment of this Act, each Regional Corporation shall select the acreage allocated to it from the lands within the region withdrawn pursuant to subsection 11(a) (1), and from the lands within the region withdrawn pursuant to subsection 11(a) (3) to the extent lands withdrawn pursuant to subsection 11(a) (1) are not sufficient to satisfy its allocation: *Provided*, That within the lands withdrawn by subsection 11(a) (1) the Regional Corporation may select only even numbered townships in even numbered ranges, and only odd numbered townships in odd numbered ranges.

(d) To insure that the Village Corporation for the Native village at Dutch Harbor, if found eligible for land grants under this Act, has a full opportunity to select lands within and near the village, no federally owned lands, whether improved or not, shall be disposed of pursuant to the Federal surplus property disposal laws for a period of two years from the date of enactment of this Act. The Village Corporation may select such lands and improvements and receive patent to them pursuant to subsection 14(a) of this Act.

(e) Any dispute over the land selection rights and the boundaries of Village Corporations shall be resolved by a board of arbitrators consisting of one person selected by each of the Village Corporations involved, and an additional one or two persons, whichever is needed to make an odd number of arbitrators, such additional person or persons to be selected by the arbitrators selected by the Village Corporations.

SURVEYS

Sec. 13. (a) The Secretary shall survey the areas selected or designated for conveyance to Village Corporations pursuant to the provisions of this Act. He shall monument only exterior boundaries of the selected or designated areas at angle points and at intervals of approximately two miles on straight lines. No ground survey or monumentation will be required along meanderable water boundaries. He shall survey within the areas selected or designated land occupied as a primary place of residence, as a primary place of business, and for other purposes, and any other land to be patented under this Act.

(b) All withdrawals, selections, and conveyances pursuant to this Act shall be as shown on current plats of survey or protraction diagrams of the Bureau of Land Management, or protraction diagrams of the Bureau of the State where protraction diagrams of the Bureau of Land Management are not available, and shall conform as nearly as practicable to the United States Land Survey System.

CONVEYANCE OF LANDS

Sec. 14. (a) Immediately after selection by a Village Corporation for a Native village listed in section 11 which the Secretary finds is qualified for land benefits under this Act, the Secretary shall issue to the Village Corporation a patent to the surface estate in the number of acres shown in the following table:

If the village had on the 1970 census enumeration date a Native population between—	It shall be entitled to a patent to an area of public lands equal to—
25 and 99	69,120 acres.
100 and 199	92,160 acres.
200 and 399	115,200 acres.
400 and 599	138,240 acres.
600 or more	161,280 acres.

The lands patented shall be those selected by the Village Corporation pursuant to subsection 12(a). In addition, the Secretary shall issue to the Village Corporation a patent to the surface estate in the lands selected pursuant to subsection 12(b).

(b) Immediately after selection by any Village Corporation for a Native village listed in section 16 which the Secretary finds is qualified for land benefits under this Act, the Secretary shall issue to the Village Corporation a patent to the surface estate to 23,040 acres. The lands patented shall be the lands within the township or townships that enclose the Native village, and any additional lands selected by the Village Corporation from the surrounding townships withdrawn for the Native village by subsection 16(a).

(c) Each patent issued pursuant to subsections (a) and (b) shall be subject to the requirements of this subsection. Upon receipt of a patent or patents:

(1) the Village Corporation shall first convey to any Native or non-Native occupant, without consideration, title to the surface estate in the tract occupied as a primary place of residence, or as a primary place of business, or as a subsistence campsite, or as headquarters for reindeer husbandry;

(2) the Village Corporation shall then convey to the occupant, either without consideration or upon payment of an amount not in excess of fair market value, determined as of the date of initial occupancy and without regard to any improvements thereon, title to the surface estate in any tract occupied by a nonprofit organization;

(3) the Village Corporation shall then convey to any Municipal Corporation in the Native village or to the State in trust for any Municipal Corporation established in the Native village in the future, title to the remaining surface estate of the improved land on which the Native village is located and as much additional land as is necessary for community expansion, and appropriate rights-of-way for public use, and other foreseeable community needs: *Provided*, That the amount of lands to be

transferred to the Municipal Corporation or in trust shall be no less than 1,280 acres;

(4) the Village Corporation shall convey to the Federal Government, State or to the appropriate Municipal Corporation, title to the surface estate for existing airport sites, airway beacons, and other navigation aids, together with such additional acreage and/or easements as are necessary to provide related services and to insure safe approaches to airport runways; and

(5) for a period of ten years after the date of enactment of this Act, the Regional Corporation shall be afforded the opportunity to review and render advice to the Village Corporations on all land sales, leases or other transactions prior to any final commitment.

(d) the Secretary may apply the rule of approximation with respect to the acreage limitations contained in this section.

(e) Immediately after selection by a Regional Corporation, the Secretary shall convey to the Regional Corporation title to the surface and/or the subsurface estates, as is appropriate, in the lands selected.

(f) When the Secretary issues a patent to a Village Corporation for the surface estate in lands pursuant to subsections (a) and (b), he shall issue to the Regional Corporation for the region in which the lands are located a patent to the subsurface estate in such lands, except lands located in the National Wildlife Refuge System and lands withdrawn or reserved for national defense purposes, including Naval Petroleum Reserve Numbered 4, for which in lieu rights are provided for in subsection 12(a) (1): *Provided*, That the right to explore, develop, or remove minerals from the subsurface estate in the lands within the boundaries of any Native village shall be subject to the consent of the Village Corporation.

(g) All conveyances made pursuant to this Act shall be subject to valid existing rights. Where, prior to patent of any land or minerals under this Act, a lease, contract, permit, right-of-way, or easement (including a lease issued under section 6(g) of the Alaska Statehood Act) has been issued for the surface or minerals covered under such patent, the patent shall contain provisions making it subject to the lease, contract, permit, right-of-way, or easement, and the right of the lessee, contractee, permittee, or grantee to the complete enjoyment of all rights, privileges, and benefits thereby granted to him. Upon issuance of the patent, the patentee shall succeed and become entitled to any and all interests of the State or the United States as lessor, contractor, permitter, or grantor, in any such leases, contracts, permits, rights-of-way, or easements covering the estate patented, and a lease issued under section 6(g) of the Alaska Statehood Act shall be treated for all purposes as though the patent had been issued to the State. The administration of such lease, contract, permit, right-of-way, or easement shall continue to be by the State or the United States, unless the agency respon-

sible for administration waives administration. In the event that the patent does not cover all of the land embraced within any such lease, contract, permit, right-of-way, or easement, the patentee shall only be entitled to the proportionate amount of the revenues reserved under such lease, contract, permit, right-of-way, or easement by the State or the United States which results from multiplying the total of such revenues by a fraction in which the numerator is the acreage of such lease, contract, permit, right-of-way, or easement which is included in the patent and the denominator is the total acreage contained in such lease, contract, permit, right-of-way, or easement.

(h) The Secretary is authorized to withdraw and convey 2 million acres of unreserved and unappropriated public lands located outside the areas withdrawn by sections 11 and 16, and follows:

(1) The Secretary may withdraw and convey to the appropriate Regional Corporation fee title to existing cemetery sites and historical places;

(2) The Secretary may withdraw and convey to a Native group that does not qualify as a Native village, if it incorporates under the laws of Alaska, title to the surface estate in not more than 23,040 acres surrounding the Native group's locality. The subsurface estate in such land shall be conveyed to the appropriate Regional Corporation;

(3) The Secretary may withdraw and convey to the Natives residing in Sitka, Kenai, Juneau, and Kodiak, if they incorporate under the laws of Alaska, the surface estate of lands of a similar character in not more than 23,040 acres of land, which shall be located in reasonable proximity to the municipalities. The subsurface estate in such lands shall be conveyed to the appropriate Regional Corporation unless the lands are located in a Wildlife Refuge;

(4) The Secretary shall withdraw only such lands surrounding the villages and municipalities as are necessary to permit the conveyance authorized by paragraphs (2) and (3) to be planned and effected;

(5) The Secretary may convey to a Native, upon application within two years from the date of enactment of this Act, the surface estate in not to exceed 160 acres of land occupied by the Native as a primary place of residence on August 31, 1971. Determination of occupancy shall be made by the Secretary, whose decision shall be final. The subsurface estate in such lands shall be conveyed to the appropriate Regional Corporations;

(6) The Secretary shall charge against the 2 million acres authorized to be conveyed by this section all allotments approved pursuant to section 18 during the four years following the date of enactment of this Act;

(7) The Secretary may withdraw and convey lands out of the National Wildlife Refuge System and out of the National

Forests, for the purposes set forth in subsections (h) (1), (2), (3), and (5); and

(8) Any portion of the 2 million acres not conveyed by this subsection shall be allocated and conveyed to the Regional Corporations on the basis of population.

TIMBER SALE CONTRACTS

Sec. 15. Notwithstanding the provisions of existing National Forest timber sale contracts that are directly affected by conveyances authorized by this Act, the Secretary of Agriculture is authorized to modify any such contract, with the consent of the purchaser, by substituting, to the extent practicable, timber on other national forest lands approximately equal in volume, species, grade, and accessibility for timber standing on any land affected by such conveyances, and, on request of the appropriate Village Corporation the Secretary of Agriculture is directed to make such substitution to the extent it is permitted by the timber sale contract without the consent of the purchaser.

THE TLINGIT-HAIDA SETTLEMENT

Sec. 16. (a) All public lands in each township that encloses all or any part of a Native village listed below, and in each township that is contiguous to or corners on such township, except lands withdrawn or reserved for national defense purposes, are hereby withdrawn, subject to valid existing rights, from all forms of appropriation under the public land laws, including the mining and mineral leasing laws, and from selection under the Alaska Statehood Act, as amended:

Angoon, Southeast.
Craig, Southeast.
Hoonah, Southeast.
Hydaburg, Southeast.
Kake, Southeast.
Kasaan, Southeast.
Klawock, Southeast.
Klukwan, Southeast.
Saxman, Southeast.
Yakutat, Southeast.

(b) During a period of three years from the date of enactment of this Act, each Village Corporation for the villages listed in subsection (a) shall select, in accordance with rules established by the Secretary, an area equal to 23,040 acres, which must include the township or townships in which all or part of the Native village is located, plus, to the extent necessary, withdrawn lands from the townships that are contiguous to or corner on such township. All selections shall be contiguous and in reasonably compact tracts, except as separated by bodies of water, and shall conform as nearly as practicable to the United States Lands Survey System.

(c) The funds appropriated by the Act of July 9, 1968 (82 Stat. 307), to pay the judgment of the Court of Claims in the case of The Tlingit and Haida Indians of Alaska, et al. against The United States, numbered 47,900, and distributed to the Tlingit and Haida Indians pursuant to the Act of July 13, 1970 (84 Stat. 431), are in lieu of the additional acreage to be conveyed to qualified villages listed in section 11.

JOINT FEDERAL-STATE LAND USE PLANNING COMMISSION FOR ALASKA

Sec. 17. (a) (1) There is hereby established the Joint Federal-State Land Use Planning Commission for Alaska. The Planning Commission shall be composed of ten members as follows:

(A) The Governor of the State (or his designate) and four members who shall be appointed by the Governor. During the Planning Commission's existence at least one member appointed by the Governor shall be a Native as defined by this Act.

(B) One member appointed by the President of the United States with the advice and consent of the Senate, and four members who shall be appointed by the Secretary of the Interior.

(2) The Governor of the State and the member appointed by the President pursuant to subsection (a) (1) (B), shall serve as co-chairmen of the Planning Commission. The initial meeting of the Commission shall be called by the cochairmen. All decisions of the Commission shall require the concurrence of the cochairmen.

(3) Six members of the Planning Commission shall constitute a quorum. Members shall serve at the pleasure of the appointing authority. A vacancy in the membership of the Commission shall not affect its powers, but shall be filled in the same manner in which the original appointment was made.

(4) (A) Except to the extent otherwise provided in subparagraph (B) of this subsection, members of the Planning Commission shall receive compensation at the rate of $100 per day for each day they are engaged in the performance of their duties as members of the Commission. All members of the Commission shall be entitled to reimbursement for travel, subsistence, and other necessary expenses incurred by them in the performance of their duties as members of the Commission.

(B) Any member of the Planning Commission who is designated or appointed from the Government of the United States or from the Government of the State shall serve without compensation in addition to that received in his regular employment. The member of the Commission appointed by the President pursuant to subsection (a) (1) (B) shall be compensated as provided by the President at a rate not in excess of that provided for level V of the Executive Schedule in title 5, United States Code.

(5) Subject to such rules and regulations as may be adopted by the Planning Commission, the cochairmen, without regard to the provisions of title 5, United States Code, governing appointments in

the competitive service, and without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, shall have the power—

(A) to appoint and fix the compensation of such staff personnel as they deem necessary, and

(B) to procure temporary and intermittent services to the same extent as is authorized by section 3109 of title 5, United States Code, but at rates not to exceed $100 a day for individuals.

(6) (A) The Planning Commission or, on the authorization of the Commission, any subcommittee or member thereof, may, for the purpose of carrying out the provisions of this section, hold such hearings, take such testimony, receive such evidence, print or otherwise reproduce and distribute so much of its proceedings and reports thereon, and sit and act at such times and places as the Commission, subcommittee, or member deems advisable.

(B) Each department, agency, and instrumentality of the executive branch of the Federal Government, including independent agencies, is authorized and directed to furnish to the Commission, upon request made by a cochairman, such information as the Commission deems necessary to carry out its functions under this section.

(7) The Planning Commission shall—

(A) undertake a process of land-use planning, including the identification of and the making of recommendations concerning areas planned and best suited for permanent reservation in Federal ownership as parks, game refuges, and other public uses, areas of Federal and State lands to be made available for disposal, and uses to be made of lands remaining in Federal and State ownership;

(B) make recommendations with respect to proposed land selections by the State under the Alaska Statehood Act and by Village and Regional Corporations under this Act;

(C) be available to advise upon and assist in the development and review of land-use plans for lands selected by the Native Village and Regional Corporations under this Act and by the State under the Alaska Statehood Act;

(D) review existing withdrawals of Federal public lands and recommend to the President of the United States such additions to or modifications of withdrawals as are deemed desirable;

(E) establish procedures, including public hearings, for obtaining public views on the land-use planning programs of the State and Federal Governments for lands under their administration;

(F) establish a committee of land-use advisers to the Commission, made up of representatives of commercial and industrial land users in Alaska, recreational land users, wilderness users, environmental groups, Alaska Natives, and other citizens;

(G) make recommendations to the President of the United States and the Governor of Alaska as to programs and budgets

of the Federal and State agencies responsible for the administration of Federal and State lands;

(H) make recommendations from time to time to the President of the United States, Congress, and the Governor and legislature of the State as to changes in laws, policies, and programs that the Planning Commission determines are necessary or desirable;

(I) make recommendations to insure that economic growth and development is orderly, planned and compatible with State and national environmental objectives, the public interest in the public lands, parks, forests, and wildlife refuges in Alaska, and the economic and social well-being of the Native people and other residents of Alaska;

(J) make recommendations to improve coordination and consultation between the State and Federal Governments in making resource allocation and land use decisions; and

(K) make recommendations on ways to avoid conflict between the State and the Native people in the selection of public lands.

(8) (A) On or before January 31 of each year, the Planning Commission shall submit to the President of the United States, the Congress, and the Governor and legislature of the State a written report with respect to its activities during the preceding calendar year.

(B) The Planning Commission shall keep and maintain accurate and complete records of its activities and transactions in carrying out its duties under this Act, and such records shall be available for public inspection.

(C) The principal office of the Planning Commission shall be located in the State.

(9) (A) The United States shall be responsible for paying for any fiscal year only 50 per centum of the costs of carrying out subsections (a) and (b) for such fiscal year.

(B) For the purpose of meeting the responsibility of the United States in carrying out the provisions of this section, there is authorized to be appropriated $1,500,000 for the fiscal year ending June 30, 1972, and for each succeeding fiscal year.

(10) On or before May 30, 1976, the Planning Commission shall submit its final report to the President of the United States, the Congress, and the Governor and Legislature of the State with respect to its planning and other activities under this Act, together with its recommendations for programs or other actions which it determines should be taken or carried out by the United States and the State. The Commission shall cease to exist effective December 31, 1976.

(b) (1) The Planning Commission shall identify public easements across lands selected by Village Corporations and the Regional Corporations and at periodic points along the courses of major waterways which are reasonably necessary to guarantee international treaty obligations, a full right of public use and access for recreation, hunting, transportation, utilities, docks, and such other public uses as the Planning Commission determines to be important.

(2) In identifying public easements the Planning Commission shall consult with appropriate State and Federal agencies, shall review proposed transportation plans, and shall receive and review statements and recommendations from interested organizations and individuals on the need for and proposed location of public easements: *Provided*, That any valid existing right recognized by this Act shall continue to have whatever right of access as is now provided for under existing law and this subsection shall not operate in any way to diminish or limit such right of access.

(3) Prior to granting any patent under this Act to the Village Corporation and Regional Corporations, the Secretary shall consult with the State and the Planning Commission and shall reserve such public easements as he determines are necessary.

(c) In the event that the Secretary withdraws a utility and transportation corridor across public lands in Alaska pursuant to his existing authority, the State, the Village Corporations and the Regional Corporations shall not be permitted to select lands from the area withdrawn.

(d) (1) Public Land Order Numbered 4582, 34 Federal Register 1025, as amended, is hereby revoked. For a period of ninety days after the date of enactment of this Act all unreserved public lands in Alaska are hereby withdrawn from all forms of appropriation under the public land laws, including the mining (except locations for metalliferous minerals) and the mineral leasing laws. During this period of time the Secretary shall review the public lands in Alaska and determine whether any portion of these lands should be withdrawn under authority provided for in existing law to insure that the public interest in these lands is properly protected. Any further withdrawal shall require an affirmative act by the Secretary under his existing authority, and the Secretary is authorized to classify or reclassify any lands so withdrawn and to open such lands to appropriation under the public land laws in accord with his classifications. Withdrawals pursuant to this paragraph shall not affect the authority of the Village Corporations, the Regional Corporations, and the State to make selections and obtain patents within the areas withdrawn pursuant to section 11.

(2) (A) The Secretary, acting under authority provided for in existing law, is directed to withdraw from all forms of appropriation under the public land laws, including the mining and mineral leasing laws, and from selection under the Alaska Statehood Act, and from selection by Regional Corporations pursuant to section 11, up to, but not to exceed, eighty million acres of unreserved public lands in the State of Alaska, including previously classified lands, which the Secretary deems are suitable for addition to or creation as units of the National Park, Forest, Wildlife Refuge, and Wild and Scenic Rivers Systems: *Provided*, That such withdrawals shall not affect the authority of the State and the Regional and Village Corporations to make selections and obtain patents within the areas withdrawn pursuant to section 11.

(B) Lands withdrawn pursuant to paragraph (A) hereof must be withdrawn within nine months of the date of enactment of this Act. All unreserved public lands not withdrawn under paragraph (A) or subsection 17(d) (1) shall be available for selection by the State and for appropriation under the public land laws.

(C) Every six months, for a period of two years from the date of enactment of this Act, the Secretary shall advise the Congress of the location, size and values of lands withdrawn pursuant to paragraph (A) and submit his recommendations with respect to such lands. Any lands withdrawn pursuant to paragraph (A) not recommended for addition to or creation as units of the National Park, Forest, Wildlife Refuge, and Wild and Scenic Rivers Systems at the end of the two years shall be available for selection by the State and the Regional Corporations, and for appropriation under the public land laws.

(D) Areas recommended by the Secretary pursuant to paragraph (C) shall remain withdrawn from any appropriation under the public land laws until such time as the Congress acts on the Secretary's recommendations, but not to exceed five years from the recommendation dates. The withdrawal of areas not so recommended shall terminate at the end of the two year period.

(E) Notwithstanding any other provision of this subsection, initial identification of lands desired to be selected by the State pursuant to the Alaska Statehood Act and by the Regional Corporations pursuant to section 12 of this Act may be made within any area withdrawn pursuant to this subsection (d), but such lands shall not be tentatively approved or patented so long as the withdrawals of such areas remain in effect: *Provided*, That selection of lands by Village Corporations pursuant to section 12 of this Act shall not be affected by such withdrawals and such lands selected may be patented and such rights granted as authorized by this Act. In the event Congress enacts legislation setting aside any areas withdrawn under the provisions of this subsection which the Regional Corporations or the State desired to select, then other unreserved public lands shall be made available for alternative selection by th Regional Corporations and the State. Any time periods established by law for Regional Corporations or State selections are hereby extended to the extent that delays are caused by compliance with the provisions of this subsection (2).

(3) Any lands withdrawn under this section shall be subject to administration by the Secretary under applicable laws and regulations, and his authority to make contracts and to grant leases, permits, rights-of-way, or easements shall not be impaired by the withdrawal.

REVOCATION OF INDIAN ALLOTMENT AUTHORITY IN ALASKA

Sec. 18. (a) No Native covered by the provisions of this Act, and no descendant of his, may hereafter avail himself of an allotment

under the provisions of the Act of February 8, 1887 (24 Stat. 389), as amended and supplemented, or the Act of June 25, 1910 (36 Stat. 363). Further, the Act of May 17, 1906 (34 Stat. 197), as amended, is hereby repealed. Notwithstanding the foregoing provisions of this section, any application for an allotment that is pending before the Department of the Interior on the date of enactment of this Act may, at the option of the Native applicant, be approved and a patent issued in accordance with said 1887, 1910, or 1906 Act, as the case may be, in which event the Native shall not be eligible for a patent under subsection 14(h) (5) of this Act.

(b) Any allotments approved pursuant to this section during the four years following enactment of this Act shall be charged against the two million acre grant provided for in subsection 14(h).

REVOCATION OF RESERVATIONS

Sec. 19. (a) Notwithstanding any other provision of law, and except where inconsistent with the provisions of this Act, the various reserves set aside by legislation or by Executive or Secretarial Order for Native use or for administration of Native affairs, including those created under the Act of May 31, 1938 (52 Stat. 593), are hereby revoked subject to any valid existing rights of non-Natives. This section shall not apply to the Annette Island Reserve established by the Act of March 3, 1891 (26 Stat. 1101) and no person enrolled in the Metlakatla Indian community of the Annette Island Reserve shall be eligible for benefits under this Act.

(b) Notwithstanding any other provision of law or of this Act, any Village Corporation or Corporations may elect within two years to acquire title to the surface and subsurface estates in any reserve set aside for the use or benefit of its stockholders or members prior to the date of enactment of this Act. If two or more villages are located on such reserve the election must be made by all of the members or stockholders of the Village Corporations concerned. In such event, the Secretary shall convey the land to the Village Corporation or Corporations, subject to valid existing rights as provided in subsection 14(g), and the Village Corporation shall not be eligible for any other land selections under this Act or to any distribution of Regional Corporation funds pursuant to section 7, and the enrolled residents of the Village Corporation shall not be eligible to receive Regional Corporation stock.

ATTORNEY AND CONSULTANT FEES

Sec. 20. (a) The Secretary of the Treasury shall hold in the Alaska Native Fund, from the appropriation made pursuant to section 6 for the second fiscal year, moneys sufficient to make the payments authorized by this section.

(b) A claim for attorney and consultant fees and out-of-pocket expenses may be submitted to the Chief Commissioner of the United States Court of Claims for services rendered before the date of en-

actment of this Act to any Native tribe, band, group, village, or association in connection with:

(1) the preparation of this Act and previously proposed Federal legislation to settle Native claims based on aboriginal title, and

(2) the actual prosecution pursuant to an authorized contract or a cause of action based upon a claim pending before any Federal or State Court or the Indians Claims Commission that is dismissed pursuant to this Act.

(c) A claim under this section must be filed with the clerk of the Court of Claims within one year from the date of enactment of this Act, and shall be in such form and contain such information as the Chief Commissioner shall prescribe. Claims not so filed shall be forever barred.

(d) The Chief Commissioner or his delegate is authorized to receive, determine, and settle such claims in accordance with the following rules:

(1) No claim shall be allowed if the claimant has otherwise been reimbursed.

(2) The amount allowed for services shall be based on the nature of the service rendered, the time and labor required, the need for providing the service, whether the service was intended to be a voluntary public service or compensable, the existence of a bona fide attorney-client relationship with an identified client, and the relationship of the service rendered to the enactment of proposed legislation. The amount allowed shall not be controlled by any hourly charge customarily charged by the claimant.

(3) The amount allowed for out-of-pocket expenses shall not include office overhead, and shall be limited to expenses that were necessary, reasonable, unreimbursed and actually incurred.

(4) The amounts allowed for services rendered shall not exceed in the aggregate $2,000,000, of which not more than $100,000 shall be available for the payment of consultants' fees. If the approved claims exceed the aggregate amounts allowable, the Chief Commissioner shall authorize payment of the claims on a pro rata basis.

(5) Upon the filing of a claim, the clerk of the Court of Claims shall forward a copy of such claims to the individuals or entities on whose behalf services were rendered or fees and expenses were allegedly incurred, as shown by the pleadings, to the Attorney General of the United States, to the Attorney General of the State of Alaska, to the Secretary of the Interior, and to any other person who appears to have an interest in the claim, and shall give such persons ninety days within which to file an answer contesting the claim.

(6) The Chief Commissioner may designate a trial commissioner for any claim made under this section and a panel of three commissioners of the court to serve as a reviewing body. One member of the review panel shall be designated as presiding commissioner of the panel.

(7) Proceedings in all claims shall be pursuant to rules and orders prescribed for the purpose by the Chief Commissioner who is hereby authorized and directed to require the application of the pertinent rules of practice of the Court of Claims insofar as feasible. Claimants may appear before a trial commissioner in person or by attorney, and may produce evidence and examine witnesses. In the discretion of the Chief Commissioner or his designate, hearings may be held in the localities where the claimants reside if convenience so demands.

(8) Each trial commissioner and each review panel shall have authority to do and perform any acts which may be necessary or proper for the efficient performance of their duties, and shall have the power of subpena, the power to order audit of books and records, and the power to administer oaths and affirmations. Any sanction authorized by the rules of practice of the Court of Claims, except contempt, may be imposed on any claimant, witness, or attorney by the trial commissioner, review panel, or Chief Commissioner. None of the rules, regulations, rulings, findings, or conclusions authorized by this section shall be subject to judicial review.

(9) The findings and conclusions of the trial commissioner shall be submitted by him, together with the record in the case, to the review panel of commissioners for review by it pursuant to such rules as may be provided for the purpose, which shall include provision for submitting the decision of the trial commissioner to the claimant and any party contesting the claim for consideration, exception, and argument before the panel. The panel, by majority vote, shall adopt or modify the findings or the conclusions of the trial commissioner.

(10) The Court of Claims is hereby authorized and directed, under such conditions as it may prescribe, to provide the facilities and services of the office of the clerk of the court for the filing, processing, hearing, and dispatch of claims made pursuant to this section and to include within its annual appropriations the costs thereof and other costs of administration, including (but without limitation to the items herein listed) the salaries and traveling expenses of its auditors and the commissioners serving as trial commissioners and panel members, mailing and service of process, necessary physical facilities, equipment, and supplies, and personnel (including secretaries, reporters, auditors, and law clerks).

(e) The Chief Commissioner shall certify to the Secretary of the Treasury, and report to the Congress, the amount of each claim allowed and the name and address of the claimant. The Secretary of the Treasury shall pay to such person from the Alaska Native Fund the amounts certified. No award under this section shall bear interest.

(f) (1) No remuneration on account of any services or expenses for which a claim is made or could be made pursuant to this section shall be received by any person for such services and expenses in addition to the amount paid in accordance with this section, and any contract or agreement to the contrary shall be void.

(2) Any person who receives, and any corporation or association official who pays, on account of such services and expenses, any remuneration in addition to the amount allowed in accordance with this section shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $5,000, or imprisoned not more than twelve months, or both.

(g) A claim for actual costs incurred in filing protests, preserving land claims, advancing land claims settlement legislation, and presenting testimony to the Congress on proposed Native land claims may be submitted to the Chief Commissioner of the Court of Claims by any bona fide association of Natives. The claim must be submitted within six months from the date of enactment of this Act, and shall be in such form and contain such information as the Chief Commissioner shall prescribe. The Chief Commissioner shall allow such amounts as he determines are reasonable, but he shall allow no amount for attorney and consultant fees and expenses which shall be compensable solely under subsection (b) through (e). If approved claims under this subsection aggregate more than $600,000, each claim shall be reduced on a pro rata basis. The Chief Commissioner shall certify to the Secretary of the Treasury, and report to the Congress, the amount of each claim allowed and the name and address of the claimant. The Secretary of the Treasury shall pay to such claimant from the Alaska Native Fund the amount certified. No award under this subsection shall bear interest.

TAXATION

Sec. 21. (a) Revenues originating from the Alaska Native Fund shall not be subject to any form of Federal, State, or local taxation at the time of receipt by a Regional Corporation, Village Corporation, or individual Native through dividend distributions or in any other manner. This exemption shall not apply to income from the investment of such revenues.

(b) The receipt of shares of stock in the Regional or Village Corporations by or on behalf of any Native shall not be subject to any form of Federal, State or local taxation.

(c) The receipt of land or any interest therein pursuant to this Act or of cash in order to equalize the values of properties exchanged pursuant to subsection 22(f) shall not be subject to any form of Federal, State or local taxation. The basis for computing gain or loss on subsequent sale or other disposition of such land or interest in land for purposes of any Federal, State or local tax imposed on or measured by income shall be the fair value of such land or interest in land at the time of receipt.

(d) Real property interests conveyed, pursuant to this Act, to a Native individual, Native group, or Village or Regional Corporation which are not developed or leased to third parties, shall be exempt from State and local real property taxes for a period of twenty years after the date of enactment of this Act: *Provided*, That municipal taxes, local real property taxes, or local assessments may

be imposed upon leased or developed real property within the jurisdiction of any governmental unit under the laws of the State: *Provided further*, That easements, rights-of-way, leaseholds, and similar interests in such real property may be taxed in accordance with State or local law. All rents, royalties, profits, and other revenues or proceeds derived from such property interests shall be taxable to the same extent as such revenues or proceeds are taxable when received by a non-Native individual or corporation.

(e) Real property interests conveyed pursuant to this Act to a Native individual, Native group, or Village or Regional Corporation shall, so long as the fee therein remains not subject to State or local taxes on real estate, continue to be regarded as public lands for the purpose of computing the Federal share of any highway project pursuant to title 23 of the United States Code, as amended and supplemented, for the purpose of the Johnson-O'Malley Act of April 16, 1934, as amended (25 U.S.C. 452), and for the purpose of Public Laws 815 and 874, 81st Congress (64 Stat. 967, 1100), and so long as there are also no substantial revenues from such lands, continue to receive forest fire protection services from the United States at no cost.

MISCELLANEOUS

Sec. 22. (a) None of the revenues granted by section 6, and none of the lands granted by this Act to the Regional and Village Corporation and to Native groups and individuals shall be subject to any contract which is based on a percentage fee of the value of all or some portion of the settlement granted by this Act. Any such contract shall not be enforceable against any Native as defined by this Act or any Regional or Village Corporation and the revenues and lands granted by this Act shall not be subject to lien, execution or judgment to fulfill such a contract.

(b) The Secretary is directed to promptly issue patents to all persons who have made a lawful entry on the public lands in compliance with the public land laws for the purpose of gaining title to homesteads, headquarters sites, trade and manufacturing sites, or small tract sites (43 U.S.C. 682), and who have fulfilled all requirements of the law prerequisite to obtaining a patent. Any person who has made a lawful entry prior to August 31, 1971, for any of the foregoing purposes shall be protected in his right of use and occupancy until all the requirements of law for a patent have been met even though the lands involved have been reserved or withdrawn in accordance with Public Land Order 4582, as amended, or the withdrawal provisions of this Act: *Provided*, That occupancy must have been maintained in accordance with the appropriate public land law: *Provided further*, That any person who entered on public lands in violation of Public Land Order 4582, as amended, shall gain no rights.

(c) On any lands conveyed to Village and Regional Corporations, any person who prior to August 31, 1971, initiated a valid mining

claim or location under the general mining laws and recorded notice of said location with the appropriate State or local office shall be protected in his possessory rights, if all requirements of the general mining laws are complied with, for a period of five years and may, if all requirements of the general mining laws are complied with, proceed to patent.

(d) The provisions of Revised Statute 452 (43 U.S.C. 11) shall not apply to any land grants or other rights granted under this Act.

(e) If land within the National Wildlife Refuge System is selected by a Village Corporation pursuant to the provisions of this Act, the secretary shall add to the Refuge System other public lands in the State to replace the lands selected by the Village Corporation.

(f) The Secretary, the Secretary of Defense, and the Secretary of Agriculture are authorized to exchange any lands or interests therein in Alaska under their jurisdiction for lands or interests therein of the Village Corporations, Regional Corporations, individuals, or the State for the purpose of effecting land consolidations or to facilitate the management or development of the land. Exchanges shall be on the basis of equal value, and either party to the exchange may pay or accept cash in order to equalize the value of the properties exchanged.

(g) If a patent is issued to any Village Corporation for land in the National Wildlife Refuge System, the patent shall reserve to the United States the right of first refusal if the land is ever sold by the Village Corporation. Notwithstanding any other provision of this Act, every patent issued by the Secretary pursuant to this Act—which covers lands lying within the boundaries of a National Wildlife Refuge on the date of enactment of this Act shall contain a provision that such lands remain subject to the laws and regulations governing use and development of such Refuge.

(h) (1) All withdrawals made under this Act, except as otherwise provided in this subsection, shall terminate within four years of the date of enactment of this Act: *Provided*, That any lands selected by Village or Regional Corporations or by a Native group under section 12 shall remain withdrawn until conveyed pursuant to section 14.

(2) The withdrawal of lands made by subsection 11(a) (2) and section 16 shall terminate three years from the date of enactment of this Act.

(3) The provisions of this section shall not apply to any withdrawals made under section 17 of this Act.

(4) The Secretary is authorized to terminate any withdrawal made by or pursuant to this Act whenever he determines that the withdrawal is no longer necessary to accomplish the purposes of this Act.

(i) Prior to a conveyance pursuant to section 14, lands withdrawn by or pursuant to sections 11, 14, and 16 shall be subject to administration by the Secretary, or by the Secretary of Agriculture in the case of National Forest lands, under applicable laws and regulations, and their authority to make contracts and to grant leases, permits, rights-of-way or easements shall not be impaired by the withdrawal.

(j) In any area of Alaska for which protraction diagrams of the Bureau of Land Management or the State do not exist, or which does not conform to the United States Land Survey System, or which has not been surveyed in a manner adequate to withdraw and grant the lands provided for under this Act, the Secretary shall take such actions as are necessary to accomplish the purposes of this Act, and the deeds granted shall note that upon completion of an adequate survey appropriate adjustments will be made to insure that the beneficiaries of the land grants receive their full entitlement.

(k) Any patents to lands under this Act which are located within the boundaries of a national forest shall contain such conditions as the Secretary deems necessary to assure that:

(1) the sale of any timber from such lands shall, for a period of five years, be subject to the same restrictions relating to the export of timber from the United States as are applicable to national forest lands in Alaska under rules and regulations of the Secretary of Agriculture; and

(2) such lands are managed under the principle of sustained yield and under management practices for protection and enhancement of environmental quality no less stringent than such management practices on adjacent national forest lands for a period of twelve years.

(*l*) Notwithstanding any provision of this Act, no Village or Regional Corporation shall select lands which are within two miles from the boundary, as it exists on the date of enactment of this Act, of any home rule or first class city (excluding boroughs) or which are within six miles from the boundary of Ketchikan.

REVIEW BY CONGRESS

Sec. 23. The Secretary shall submit to the Congress annual reports on implementation of this Act. Such reports shall be filed by the Secretary annually until 1984. At the beginning of the first session of Congress in 1985 the Secretary shall submit, through the President, a report of the status of the Natives and Native groups in Alaska, and a summary of actions taken under this Act, together with such recommendations as may be appropriate.

APPROPRIATIONS

Sec. 24. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act.

PUBLICATIONS

Sec. 25. The Secretary is authorized to issue and publish in the Federal Register, pursuant to the Administrative Procedure Act, such regulations as may be necessary to carry out the purposes of this Act.

SAVING CLAUSE

Sec. 26. To the extent that there is a conflict between any provision of this Act and any other Federal laws applicable to Alaska, the provisions of this Act shall govern.

SEPARABILITY

Sec. 27. If any provision of this Act or the applicability thereof is held invalid the remainder of this Act shall not be affected thereby.

Approved December 18, 1971.

APPENDIX E

RULE INVOLVED

Federal Rule of Civil Procedure:

RULE 19. JOINDER OF PERSONS NEEDED FOR JUST ADJUDICATION

(a) *Persons to be Joined if Feasible.* A person who is subject to service of process and whose joinder will not deprive the court of jurisdiction over the subject matter of the action shall be joined as a party in the action if (1) in his absence complete relief cannot be accorded among those already parties, or (2) he claims an interest relating to the subject of the action and is so situated that the disposition of the action in his absence may (i) as a practical matter impair or impede his ability to protect that interest or (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of his claimed interest. If he has not been so joined, the court shall order that he be made a party. If he should join as a plaintiff but refuses to do so, he may be made a defendant, or, in a proper case, an involuntary plaintiff. If the joined party objects to venue and his joinder would render the venue of the action improper, he shall be dismissed from the action.

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IN THE

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OCTOBER TERM, 1974

No. 74-1118

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CHUGACH NATIVES, INC.,
Petitioners

v.

CENTRAL COUNCIL OF THE TLINGIT & HAIDA INDIANS
OF ALASKA AND SEALASKA CORPORATION,
Respondents

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

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MEMORANDUM OPPOSING CERTIORARI

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April, 1975

WILSON - EPES PRINTING CO., INC. - RE 7-6002 - WASHINGTON, D. C. 20001

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MEMORANDUM OPPOSING CERTIORARI

Virtually from the time of organization of respondent Sealaska Corporation in June 1972, and continuously thereafter until the filing of this suit on May 1, 1973, respondents were engaged in endeavors to get petitioners, first to negotiate, and later to arbitrate, the boundary between their respective regions.

Section 7(a) of the Alaska Native Claims Settlement Act of December 18, 1971 (the Act), 85 Stat. 688, 691-692 (43 U.S.C. 1606(a)) in pertinent part provides:

> Any dispute over the boundaries of a region or regions shall be resolved by a board of arbitrators consisting of one person selected by each of the Native associations involved, and an additional one or two persons, whichever is needed to make an odd number of arbitrators, such additional person or persons to be selected by the arbitrators selected by the Native associations involved.

Respondents' position is that, historically and contemporaneously, the coast of the Gulf of Alaska from approximately Yakutat to the mouth of the Copper River is the territory of the Tlingit Indians (represented by respondents) and should be included in their region. On December 11, 1972, the Secretary set a boundary between respondents' and petitioners' regions on the 141st meridian and advised respondents by letter:

> In case there is objection and the dispute goes to arbitration, the boundary may be set by such arbitration. Unless the arbitration establishes a boundary change within 90 days from the receipt of this letter, the boundary contained in the enclosed description and map will be used by this Department in its administration of the Alaska Native Claims Settlement Act of 1971.

This boundary being unsatisfactory to respondents, on January 24 and April 9, 1973, they served formal demands for arbitration upon petitioners. These demands having evoked no response, respondents instituted this suit on May 1, 1973.

On petitioners' motion it was dismissed on December 4, 1973 by the district court (reconsideration denied January 31, 1974), on the ground that it was barred by laches.

On September 5, 1974, the Court of Appeals for the Ninth Circuit reversed. Assuming, as petitioners contended, that the Secretary intended by his letter of December 11, 1973, to prescribe a period of limitations for arbitration under section 7(a) binding on the regional corporations *inter sese*, rather than simply informing that after 90 days he would use the boundary described in his letter for administrative purposes, the court of appeals held that he acted beyond any authority derivable from the Act. It held further that respondents had not been guilty of laches and that the Secretary was not a necessary party to a suit between Native organizations to establish their boundaries by arbitration in accordance with section 7(a) of the Act.

All of the issues petitioners would raise here were fully presented and considered, and fairly decided, below. Section 7(a) of the Act granted the Native peoples of Alaska, through their regional associations and corporations, the right to arbitrate regional boundary disputes between themselves. This coincides with the Congressional policy, expressed in section 2 of the Act and its legislative history, of self-determination for Alaska Natives. Nowhere in the Act or in the legislative history is it suggested that the Secretary is possessed of authority to curtail this important right. Yet the petitioners argued below that the Secretary intended to do just that by his December 11, 1972 letter and that this letter should be accorded great weight as a contemporaneous administrative "interpretation" of the statute. The court of appeals correctly concluded that the Act reserved the settlement of boundary disputes to the Natives themselves by a provision too clear to admit of administrative "interpretation." Such right might be cut off by laches, but not by administrative fiat.[1]

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[1] Assuming, with petitioners (Pet. 6-7), that, if the respondents' region were to be enlarged as a result of arbitration, it would

This conclusion was reached not only by the appellate court but apparently by the trial court as well, since the latter based its decision, not on the Secretary's authority to administratively curtail the right of arbitration granted by the statute, but upon a finding that the respondents were barred by laches. In their petition for certiorari petitioners fail to address the laches issue, although they urged it as a major point in both lower courts. The appellate court correctly held that the undisputed facts surrounding respondent's attempts to arbitrate the boundary dispute refute the charge of laches.

In this suit to compel arbitration under section 7(a) of a disputed boundary, a right bestowed on the Native people alone, there was no need or reason to join the Secretary as a party, nor does he have standing in the arbitration proceedings now going forward pursuant to

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no longer be permissible for the Secretary to use his boundary of December 11, 1972 as fixative of the size of the southeastern region for the purpose of administering the allocation formula in section 12(c), and that such an enlargement would necessitate recomputation of the entitlements of the several regional corporations, it is clear that the resultant changes would be inconsequential. As the amount of land to be allocated thereunder is 16 million acres, and as Alaska comprises more than 375 million acres, increasing the area of the southeastern region (which comprises about 27 million acres as bounded by the Secretary) by as many as 500,000 acres would change the overall results of applying the formula hardly at all. In any event, as petitioners acknowledge, theirs is the only region that could possibly be adversely affected by an increase in the size of respondents' region. All of the other regions eligible to receive land under section 12(c) would have their entitlements very slightly increased, and the quantities of land presently withdrawn in each of these regions in aid of their rights under section 12(c) are substantially in excess of the quantities that would be required to satisfy such increased rights. Apart from the cultural significance of the area in dispute to the Tlingit Indians, the importance to respondents of having included in their region all of their traditional lands is that it enhances the area wherein they may exercise their rights to receive lands under section 14(h) of the Act.

the mandate of the court of appeals. This is clearly shown by section 7(a) of the Act and is in accord with the Congressional purpose to depart from the paternalism which often characterized past legislation affecting Native Americans.

This is a unique and isolated case. It arises under a special provision of the Act that applied only to the twelve Alaska Native regional corporations, the office of which provision, but for this case, has now been completely executed. Although at one time seven of the twelve regional corporations were involved in disputes over boundaries, these have all since been settled apparently beyond the possibility of litigation, and the dispute existing between the parties hereto is the only one of the kind outstanding. In the unlikely event that any other regional corporation presently were to attempt to found litigation on the arbitration provision of section 7(a), it would almost certainly be held barred by laches under the standards expounded in the opinion of the court of appeals.

Pursuant to the district court's order of December 10, 1974, the parties hereto are presently proceeding with arbitration. When this arbitration is completed, all the regional boundaries within the State of Alaska provided for by section 7(a) will have been finally determined and the arbitration provision will be a dead letter.

The case does not warrant review by this Court and a writ of certiorari should be denied.

Respectfully submitted,

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PETITIONERS' REPLY MEMORANDUM

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PETITIONERS' REPLY MEMORANDUM

A. Acknowledging that if arbitration is directed and Sealaska prevails therein, "the entitlements of the several Regional Corporations will have to be recomputed,"[1] under § 12(c) of the Act (see Pet. 17-18), respondents nevertheless contend that an increase of Sealaska's bounda-

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[1] Memorandum opposing certiorari (hereafter Mem.), p. 4, n. 1, cont. The petition for certiorari will be referred to herein as "Pet.".

ries "*by as many as 500,000 acres* would change the overall results of applying the formula hardly at all" (Mem. 4, n. 1 emphasis added).[2] This contention, like respondents' assertion that sufficient land has already been withdrawn to satisfy any additional entitlements of other regions, is unsupported by anything in the record. The District Court concluded that ordering arbitration in this case "would impede the Secretary's ability to implement Sections 5, 11, 17 and 19 of the Act according to the timetable set forth in the Act." (Pet. 3(a)); the Court of Appeals did not express disagreement with this conclusion. Indeed, respondents have not previously contested the Secretary of Interior's assessment that a revision of Sealaska's boundaries would uproot "every major administrative decision previously made." (R. 169, quoted at Pet. 18).

Likewise unwarranted are respondents' speculations that it is "unlikely" that any other regional corporation will wish to change its present boundaries and that if any should do so, its claim "will almost certainly be held barred by laches" (Mem. 5). Given the inherent imprecision of that doctrine (Pet. 15), the decision below makes it impossible now or in the foreseeable future to declare "with certainty" (§ 2(b) of the Act) that the regional boundaries have been "finally determined" (Mem. 5).[3] Yet, if the

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[2] Since Sealaska has hitherto claimed that its boundary should be extended west at least to the Copper River, a potential addition of over 3,500,000 acres, this statement, unless intended to mislead the Court (which we are confident it is not) must be taken as a representation that only 500,000 acres will be in dispute if the order to arbitrate escapes review.

[3] For example, regional corporations that were negotiating their boundaries with neighbors and withheld the demand to arbitrate because they assumed the Secretary's time limit was binding, could not be charged with lack of diligence (Pet. 8a quoting *Costello* v. *United States*, 365 U.S. 265, 282) if they assert such a demand when that assumption is finally held to have been unwarranted.

intent of Congress had been respected, § 7(a) would long ago have become a "dead letter" (*id.*) since the establishment of the regional boundaries is the essential first step in determining the region's entitlement to land and in the withdrawal and selection process (Pet. 15-17).

B. While "Section 7(a) of the Act granted the Native peoples of Alaska, through their regional associations and corporations, the right to arbitrate regional boundary disputes between themselves" (Mem. 3), it does not also grant them the right to determine the *timing* of arbitration. For the right to arbitrate is ancillary to and in aid of the Secretary's responsibility under § 7(a) to draw regional boundaries. Congress having directed him to do so within one year, in furtherance of its desire that the grant be distributed "rapidly, with certainty," it would have been utterly self-defeating to deny the Secretary the power to impose a deadline for the completion of arbitration which could upset the boundaries he established.

C. Emotional catchwords like "paternalism" (Mem. 5) ought not obscure the Secretary's central administrative role. And when this role is properly appreciated, three propositions of general importance necessarily follow concerning the proper relationship of the courts and administrative officials:

(1) The Secretary's broad responsibilities under the Act bring into play the precedents which require the courts to give a generous construction to his authority to accomplish the Congressional purposes, rather than to imply from the failure to spell out such authority that it has been withheld (Pet. 19-21).

(2) The Secretary's construction of § 7(a) is entitled to great respect under the *Norwegian Nitrogen Products* principle (Pet 21-22); and

(3) The Secretary's policy in establishing a deadline should not be judicially disapproved in a proceeding in

which he is not a party (Pet. 23-26). Despite the respondents' artful joinder of the two concepts in a single sentence, the Secretary's lack of standing in arbitration proceedings says nothing about propriety of joining him as a participant in this suit to compel arbitration, which is governed by Rule 19 F.R.Civ.P. Respondents cannot and do not deny that the decision of the court below conflicts with other Court of Appeals holdings regarding the joinder of a federal agency in a suit which indirectly attacks "the integrity of its administrative decision", See *Boles* (Pet. 23-24) 468 F.2d 476, 479, and more broadly with Justice Harlan's lucid analysis of that Rule in *Provident* (Pet. 25).[4]

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[4] Since respondents seek to convey the impression that this case will soon be moot because "pursuant to the district court's order of December 10, 1974, the parties hereto are presently proceeding with arbitration" (Mem. 5; *see also, id.* 4), we note that while each side has picked its arbitrator, the arbitrators have not yet met, as § 7(a) contemplates, to select a neutral.